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POLITICAL SCIENCE QUARTERLY.

THE RELATION OF THE CONSTITUTION OF THE UNITED STATES TO NEWLY ACQUIRED TERRITORY.

IF "new occasions teach new duties," they also require new theories or a new adjustment of old theories. Periods of confusion of the public mind concerning the provisions and requirements of its constitutional law and custom frequently occur in the history of every state or nation; and, in order to pass successfully through such periods, recourse must be taken to the fundamental principles of its political science and the subject under issue must be argued out again upon the basis of history, natural reason and social conditions. In this way, and in this way alone, can sound interpretation of old doctrine be arrived at and sound departures from old doctrine be determined on. In this process, legislative statutes and judicial decisions and dicta must be taken into account, both in letter and in trend, but they are not to be regarded as invulnerable or exempt from assault. They, too, must be tested by the requirements of history, natural reason and social conditions. Those who remember the trend of the statutes of Congress on the subject of slavery, ending in the Fugitive Slave Law and the Kansas-Nebraska Act, and the trend of the decisions of the Supreme Court of the United States, ending in the Dred Scott judgment, need no argument upon this point.

It is entirely evident to all observers, close or casual, of the

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flux and flow of political opinion in the United States during the past year or two, that this country has again arrived at one of these periods of confusion of the public mind in regard to the fundamentals of its political and civil life and development. The acquisition of distant territory, separated by broad bodies of water from our natural national abode, and the necessity of providing government for its inhabitants, have led us into untried paths; and we are evidently groping our way, without much apparent aid from the star of our history or the compass of the Constitution. At such a time, and in such embarrassment, the only course left for sincere and prudent men is to go back to the point of departure and take the bearings anew.

The question which is troubling our minds and our consciences is, how the Constitution of the United States is extended to newly acquired territory; and the two answers to the query which have up to this time been framed are contradictory of each other as to the immediately resulting civil status of the inhabitants of the acquired territory. The one answer is, that the Constitution extends to the new territory as the immediate and necessary incident of the acquirement — *ex proprio vigore*, as the upholders of this theory term it. The other is, that the extension to the new territory is effected, and can be effected, only by an act of Congress commanding and proclaiming the same. Neither of these answers is satisfactory, and taken together they do not exhaust the alternatives.

The difficulty about the second answer is that it allows the government of the United States, at the pleasure of Congress, to go with absolute power into certain places, unattended by the limitations of the Constitution in behalf of civil liberty. Can the government of the United States lawfully do this? And if it can, whence does it derive its authority for so doing?

These latter questions can be rightly resolved only by recurring to the original fundamental relation between the government and the Constitution. In most of the European states the constitution has been created by the government, and is in substance a system of limitations upon the powers and procedures of the government, set by the government itself and valid

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within a given district determined by itself. Such a constitution is very properly called, in the nomenclature of European political science, "*une charte constitutionelle*," a charter. The constitutions of Prussia, Austria, Italy, Denmark, Sweden and, we may say, England fall under this category, both in respect to origin and in respect to the relation between the government and the constitution. It goes without saying, where such a system as this exists, that the government is sovereign, and that therefore the government can plant itself in territory outside of the district for which it shall have granted its charter of limitations, without any regard whatever to this charter.

On the other hand, where, as in the case of the United States, the government is the creature of the constitution; where it draws its life and legitimacy at every instant from the constitution; where it is identified with the constitution — then it goes also without saying that any attempt of the government to plant itself anywhere without warrant from the constitution, or to exercise powers not granted or permitted by the constitution, is nothing more or less than usurpation. In the case of such a relation between constitution and government, the constitution must not be conceived of as the parchment on which it is described, nor must the government be conceived of as the official personnel exercising its powers; but the constitution must be viewed as the organic principle, the life, of the government. And when thus viewed, the alternatives are, not constitutional government or extra-constitutional but legitimate government, but constitutional government or no government — constitutional government or a band of adventurers seeking to set up a despotism and wrongfully sustained therein by the government created in the constitution. These distinctions constitute the fundamental differences between European political science and public law and American political science and public law. As Americans, we must hold to them, if we would not lose the great advance which we have made, both in theory and in reality, over European conditions.

Recurring now to the question we have proposed, the first answer is, as has been stated, that the Constitution of the

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United States is extended, *ex proprio vigore*, over new territory acquired by act of the government of the United States. The difficulty with this is that it takes no account of the fact that, in the general body of public law which we call the Constitution of the United States, we have a constitution of government for war and a constitution of government for peace; and, further, that the constitution of civil government is also divided into at least two parts, namely, (1) a constitution of federal government for a certain portion of the country, that portion which has State local government, and (2) a constitution of centralized government for another portion of the country, that portion not possessing State local government. Now this answer appears to claim that the *entire* Constitution of the United States is extended over newly acquired territory by virtue of the act of acquirement; while, as a fact, there is no part of our country, and there never has been any part of it, over which the whole Constitution of the United States has been *in vigore* at any given moment, and there never can be, so long as the Constitution remains what it is. The true view, both in principle and in fact, is that only portions of the Constitution are *in vigore* in any particular part of the country, and that those portions are the provisions adapted to the political situation of that part.

Such being the case, we do not have to determine whether the Constitution goes with the government into newly acquired territory *ex proprio vigore*, or whether the government may set itself up in such territory and govern there as it will until Congress shall declare the forms and limitations of the Constitution *in vigore*. The real questions with which we have to deal are: What portions of the Constitution go with the government into newly acquired territory? and Where does the authority rest, under the Constitution, of determining the political situation that obtains in a given locality at a given time?

As the answer to the latter question virtually determines that to the former, we will treat of that first. My proposition is that Congress is the body which, in our political system, must ultimately determine the political situation in a given locality

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that is under either the sovereignty of the United States or the temporary military occupation of the United States. The Constitution permits either of these relations between the United States and a given territory. That is, when the military forces of the United States establish a temporary occupation over foreign territory, they do so by virtue of authority derived from the Constitution, and they exercise their powers therein by virtue of the same authority. This authority is just as necessary in this case as in the case of an established sovereignty of the United States over the same territory. In other words, the parts of the Constitution which relate to war in a foreign territory go with the government of the United States, or the military part of that government, into the invaded territory and regulate the action of that government while remaining there in the military capacity. Now who shall determine when the government of the United States shall take foreign territory under military occupation? And who shall determine when this situation shall cease or be changed to an established sovereignty?

A careful study of the Constitution, in its provisions and in its application to practice, shows that Congress is the body which does and must do these things. In the first place, Congress alone has the power to declare offensive war — that is, the power to authorize the government to invade foreign territory and establish a military occupation. After that happens, the president may govern it as he will, by virtue of his constitutional powers and prerogatives as commander-in-chief of the army and navy, *so long as the condition of military occupation continues.* But Congress has, in the second place, both the influence and the legal power to put an end to this condition. It can withhold pay, supplies and recruits from the occupying force; and, if the president persists in maintaining the occupation after Congress shall have willed otherwise, Congress can lawfully impeach him and remove him from office; after which the occupying force, if it should continue to obey his commands, would become in law a body of private adventurers and freebooters, having no connection whatsoever with the government of the United States.

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Or, on the other hand, and in the third place, Congress can put an end to the military occupation by erecting civil government within the territory occupied, which would mean the taking of such territory under the sovereignty of the United States. The Constitution certainly vests this power in Congress, and in Congress alone; and when Congress shall have exercised this power, then those parts of the Constitution which relate to the particular kind of civil government that Congress may deem suited to the political situation within the given territory will go with that government into that territory, and remain there until Congress shall determine that the political situation requires some other kind of civil government or a return to the régime of martial law. With a change in the will of Congress, those portions of the Constitution which relate to the other kind of civil government or to the régime of martial law will go into operation, according as the one or the other system is ordained by Congress to succeed.

Again, when the question arises in regard to the political situation in any part, or in the whole, of the country under the already established sovereignty of the United States, Congress is likewise the body empowered by the Constitution to make the decision, and consequently to determine which kind of government provided by the Constitution shall, at any given time, obtain in such parts or in the whole; and, according to the decision of Congress, those parts of the Constitution which relate to the kind of government set up will go with that government.

There is a decision of the Supreme Court of the United States which appears to militate somewhat against this proposition. It is the opinion in the noted Milligan case, reported in the fourth volume of Wallace. This opinion holds that "martial law can never exist where the courts are open and in the proper and unobstructed exercise of their jurisdiction." This proposition seems to attribute to the United States justices and judges the power, under the Constitution, of determining when and where, in the United States, the political situation may require martial rule, as distinct from civil government of some kind. But when we reflect that Congress may lawfully abolish every United

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States court, at any moment, except the Supreme Court at Washington, we see how entirely futile it is to attribute any power to the judges to keep their courts open in defiance of the will of Congress. There is, moreover, no doubt that the questions as to what political situation may obtain in a given quarter at a given time, and which kind of government, provided by the Constitution, may be required by the situation, are in their nature political questions — questions which must ultimately be decided by Congress and not by the courts at all. It is true that the president will naturally be called upon to act first, in proclaiming under martial law a district in which he cannot execute the laws by the ordinary civil means. But if Congress wills otherwise, it has the constitutional power to render the president's act null and void, to treat it as usurpation and to remove him from his office. Moreover, it can lawfully abolish the army, the navy and the whole body of civil officials — that is, it may strip the president of every means of executing his attempt to interpret the political situation and to meet its requirements.

Likewise, when, by Congressional determination or by the determination of the president approved or permitted by Congress, the régime of martial law shall have become established, Congress alone has the constitutional power to put a period to the same, by providing for the establishment or reëstablishment of civil government within the given district. The president may take it upon himself to attempt this; but if his action be not sustained by Congress, it will be null and void, since the Constitution expressly declares that Congress shall have "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," and the power "to admit new states into the Union." That is, the whole power of constructing civil government in districts where, either by reason of the régime of martial law or for any other reason, it does not exist, is a power confided by the Constitution to Congress; as is also the power of determining which kind of civil government, allowed by the Constitution, may be erected.

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This is not merely the political theory of our system: the courts have declared it to be our public law, and it has been the unvarying practice of our history. The struggle of Mr. Johnson against this principle, in his attempt to claim for the president the power to restore, or to permit to be restored, State government in districts where State government had been displaced by martial law, only served to rouse Congress to the consciousness and the exercise of its own exclusive powers upon the subject.

But when Congress shall have determined the nature and requirements of the political situation in any district or quarter, and shall have established, or authorized the establishment of, that kind of government allowed by the Constitution which, in its judgment, will best meet and satisfy those requirements, then those parts of the Constitution which relate to that kind of government — which define its structure, and enumerate, or describe, and limit its powers — go with it in every case; for they are the very principles of its existence, the very essence of its life, and it has no lawful existence outside of them.

So far the way has been fairly plain and open to us, but we have now arrived at the question or questions upon whose solution depends the value or the worthlessness of all that has gone before — the questions as to what are the kinds of government provided for in the Constitution, what portions of the Constitution go with each, and who may authoritatively and constitutionally determine these questions.

From the points of view furnished by the principles of sound political science and by the language of the constitutional text, we would say that the Constitution of the United States provides for three kinds of government — namely, martial law, centralized republican civil government and federal republican civil government; that those portions of the Constitution which relate to the powers of the president as commander-in-chief of the army and the navy of the United States and to his responsibility to Congress, under pain of impeachment, for the use he may make of these powers, or rather for his abuse of them, go with the first, wherever it may go; that all those portions which relate to the structure of the government, the enumeration of its specific

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powers, and the civil liberty of the citizen and the individual, go with the last; and that those portions which relate to the power of Congress to dispose of, and constitute government for, those parts of the territory of the United States not under State local government, together with those portions which relate to the civil liberty of the inhabitants of such parts, go with the second, wherever it may go.

We may also say, from the same points of view and from actual judicial interpretation, — interpretation acquiesced in by both the executive and Congress, — that the body authorized by the Constitution to determine these questions is, when they are political in character, Congress, and when they directly affect civil liberty, the judiciary; and that the body authorized to determine what matters are primarily political and what primarily affect civil liberty, is the judiciary.

The progress over this additional stage in the solution of our problem has also been fairly clear and open, but we come now at last into the region of difficulty and doubt. Two more questions require to be successfully answered, before we can claim mastery over our subject. The first is this: What provisions of the Constitution are to be included under the category of individual civil liberty? And the second is this: Do these provisions apply uniformly throughout all territory under the sovereignty of the United States in which any kind of civil government shall have been established?

According to the principle laid down in the preceding paragraph, these are judicial questions, and must be decided finally by the Supreme Court of the United States. In fact, they have already been very largely decided in almost all of their details, but just enough remains still unfixed to raise doubts upon some points and to give opportunity for divergent views. In other words, sufficient has already been adjudged to create a clearly discernible trend in the development of judicial opinion upon these subjects, but not enough to enable one to predict with certainty just what the courts will hold upon all the points as yet undecided.

We may say, in general, that it is now well established law

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that all those provisions of the Constitution which relate to the protection of the individual against arbitrary arrest, detention, arraignment, trial and punishment in criminal cases, those which relate to his protection against spoliation through the arbitrary and uncompensated taking of his property or through arbitrary and unequal taxation, those which relate to his protection in the exercise of the freedom of speech, opinion and petition, and those which relate to his protection in the exercise of freedom of conscience and religion, are to be classed under the division of civil liberty, and are, therefore, under judicial protection against executive and legislative encroachment. It is the function and prerogative of the courts to construct the boundaries of this sphere, by judicial interpretation of the constitutional provisions, and to prohibit the political departments of the government from trenching upon it. This is the most distinctive thing, the most sacred thing, in the system of American liberty; and without it our political science and jurisprudence would not differ essentially, so far as civil liberty is concerned, from the European doctrines and practices.

We may also say that it is fairly well established law — although some of the propositions laid down as law do not rest exactly upon decisions in point, but are based in some degree upon the reasoning sustaining the decisions and the dicta pronounced in connection with them — that all of the provisions of the Constitution defensive of civil liberty against the government of the United States apply with the same force and uniformity throughout all territory under the sovereignty of the United States in which civil government exists, and that all those provisions of the Constitution defensive of the civil liberty of the individual against the States also apply with the same force and uniformity against the United States government, as a local government, in all those parts of the country which possess civil government under the sovereignty of the United States, but not State government, — that is, those parts called "Territories." It is toward this last proposition and its corollaries that the caution expressed at the opening of this paragraph is directed. The language of the Supreme Court of the United States upon this subject, in the

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case of the National Bank *vs.* County of Yankton (101 United States Supreme Court Reports), is that Congress has in the Territories "all the powers of the people of the United States, except such as have been expressly or by implication reserved in the prohibitions of the Constitution"; and, again, that the relation of the Territories "to the general government is much the same which counties bear to the respective States, and Congress may legislate for them as a State does for its municipal organizations"; and, finally, that Congress "may do for the Territories what the people, under the Constitution of the United States, may do for the States." These propositions are stated in a somewhat confusing way, but taken together they apparently mean that the provisions of the Constitution defensive of the civil liberty of the individual against the States, as well as those directed specifically against the United States government, apply in his behalf against the United States government in those parts of the country under civil government, but not enjoying State local government.

The term used in the opinion is "Territories"; and in these latter days the contention has been advanced that the sovereignty of the United States may extend over a region which is not organized either as a State or as a Territory. The purpose of the contention is to get rid of the defenses of the Constitution in behalf of the civil liberty of the individual in such a region. It is a subterfuge in some minds and a sophism in others. A Territory is nothing but centralized civil government by the United States government within a district designated by Congress. It makes no difference whether the Congress of the United States legislates immediately for this district or allows a Territorial legislature to make laws as to local affairs—whether the officials of the United States government execute the laws therein, or Territorial officials are permitted by Congress to do so. And it makes no difference by what name we may call this organization—territory, district, colony or what not. The essence in every case is exactly the same. It is simply the kind of civil local government provided by the Constitution of the United States for those parts of the country under the sovereignty of the

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United States which do not enjoy State local government. It is true that the United States may have sovereignty over country which is not organized into either States or Territories; but when this is the case, there is in such country either no government at all or the régime of martial law. The instant civil government is organized therein it must, under the Constitution of the United States, be either the centralized civil republican government of the United States or the federal civil republican government of the United States. And it is not of the slightest moment what term may be applied in the description of either one, because the essence, principle and limitations of both are fixed by the Constitution and cannot be varied except by an amendment to the Constitution. In this very case of the National Bank *vs.* County of Yankton, the Court calls the Territories in one place "political subdivisions of the outlying dominion of the United States." It says they are only that. And it distinctly indicates that there is, in essence, no other kind of civil political subdivision in such dominion known to the Constitution of the United States.

Let us return, however, from this digression to the main line of the argument. If the opinion of the Court in this case is as we conceive it, — namely, that both the provisions of the Constitution defensive of the civil liberty of the individual against the United States government, and those defensive of his civil liberty against the States, apply in his behalf against the United States government and its agencies in the government of the Territories, — it is easy to see that, as against the powers of government as a whole, the individual has, in some respect, a larger immunity in the Territories than in the States; though sound political science would hold that, if there should be any difference in this respect, it should be to the advantage of the individual in the States. For example, under the present judicial interpretation of the Constitution of the United States, neither the United States government nor its agencies may establish a religion in the Territories or limit any individual in the free exercise of his religion or prosecute for crime without grand jury indictment, while a State may do all these things

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within its own jurisdiction; and this larger immunity in the personal sphere would not be overbalanced, or even balanced, by a more unlimited governmental control over private property in the Territories than exists in the States, if, as the Supreme Court seemed to intimate, the prohibitions upon the States in behalf of the civil liberty of the individual apply against the United States government in the Territories. It is for this reason that we consider the doctrine apparently advanced by the Court in the case of the National Bank *vs.* County of Yankton as bad law or doubtful law — or perhaps it would be more correct, as it certainly would be more modest, to say that it is for this reason that we doubt the correctness of our conception of the meaning and intention of the Court in the statement of the propositions relative to this subject.

All the questions thus far discussed have been made practical issues by the results of the war between the United States and Spain; and Congress has in its organic law for Porto Rico departed in some points from the principles of our political science, if not from the prescripts of our public law, as hitherto understood and as stated in this paper. The point around which the contention has chiefly turned is the provision which imposes a duty of fifteen per cent of the existing customs tariff against foreign countries upon articles of merchandise going into Porto Rico from the States of the United States or coming into the States of the United States from Porto Rico.

In the light of the principles which we have laid down, let us see if this can be done constitutionally. We may affirm at the outset that this is certainly a judicial question. It touches primarily the private property of the individuals originally engaged in a commercial transaction. If the question is raised by any of these individuals through a suit, brought in proper form and under appropriate procedure, the Court will surely take jurisdiction and render decision upon the validity or nullity of the law involved in the case. We would not venture to predict what that decision may be. Political considerations do sway courts and have influenced the views of the Supreme Court of the

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United States, however loudly disclaimed. We can only point out what we think the Constitution requires in the premises.

Four main cases may arise in regard to this subject, under civil government, for we are now considering the subject wholly from the point of view of this status. The first would be that in which Congress should impose a duty upon merchandise coming from a foreign country into any Territory or district subject to exclusive centralized civil government by the United States — that is, a duty in addition to the regular tariff for the whole United States, or, in case there were no such uniform tariff, a special duty for the particular Territory or district. It is very clear from the text of the Constitution itself that Congress could not do this, if the proceeds from the duty were intended for the general treasury of the United States. The question is therefore narrowed down to this: Can Congress, under its power of exclusive local legislation for the Territory or district, impose such a duty for local purposes? A State of the Union may do this, if Congress will allow, according to an express provision of the Constitution. Why may not Congress, then, do it for a Territory or district? There is only one thing to prevent it, and that is the express provision of the Constitution that "*all* duties, imposts and excises shall be uniform throughout the United States." And the Supreme Court has said that the title "United States" includes all territory under the sovereignty of the United States over which civil government, either centralized or federal, is in operation. It is possible that, in deciding a case exactly in point, the Court might say that this constitutional limitation refers only to duties levied and collected for the general purposes of the whole United States, and might thus relieve Congress from this limitation in legislating for the local purposes of the Territory or district. It might seem to Congress most beneficial to the interests of the Territory or district to raise the revenue for its local purposes in this way. The importers in the other parts of the United States would hardly object. But the manufacturers might regard it as giving an undue encouragement to manufacturing interests in the given Territory or district. The argument in

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favor of such a Congressional power is a tortuous one, and it is probable that many obstacles in the way of its execution would spring up, were it ever attempted actually to test it.

The second case would be presented if Congress should impose upon merchandise coming from a foreign country, into a Territory or district under the centralized civil government of the United States, a lower rate of duty than that applying to the United States generally, or should remit the general duty altogether in such Territory or district. Congress certainly could not do this in legislating for the whole United States. Uniformity in rate of duty is certainly required by the Constitution in such legislation. And it is very doubtful, at least, if Congress may do so while legislating specially for the Territory or district, and for the local purposes and interests thereof. The relations of trade with foreign countries — that is, with countries not under the sovereignty of the United States — are in good political science matters of general interest chiefly and primarily, and they are so dealt with by the Constitution. The Court has not yet been called upon to decide this question. But natural reason would hold, it seems to me, that when Congress opens the door anywhere, it must open it everywhere. Protection does not comport with world-empire. It is naturally one of the policies of the purely national state, and belongs within that period of a state's development during which it is perfecting its national political and industrial independence. When a state shall have passed beyond this period and shall have entered upon the task of conveying its civilization into distant parts, then it will have entered upon the period of world intercourse and commerce — the period of free exchange of ideas and commodities.

The third case would be that of the imposition by Congress of a duty upon merchandise going from the States of the Union into a Territory or district under the exclusive civil government of the United States. It is certain that Congress can do this, when legislating for the whole United States, only on condition that the duty shall be made uniform between all the States, Territories and districts, under the sovereignty of the United

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States, in which civil government exists — that is, only if the duty shall be at the same rate on the same article in going from any State, Territory or district into any other. It is doubtful if Congress has the power to impose such a duty even under this condition. Congress has, by the express language of the Constitution, the power to "regulate commerce among the several States," and it is inferred correctly that this includes the power to regulate commerce among the States, Territories and districts; and there is no express prohibition upon Congress against imposing a duty on merchandise in transit between the several States, Territories and districts. But every student of the constitutional history of the United States knows that this power was conferred on Congress, not for the purpose of allowing the United States government to erect such barriers to commerce and trade between the several States, Territories and districts, but to enable the United States government to prevent the States from erecting them. It may be held, therefore, that, according to the spirit of the Constitution, Congress cannot, when legislating for the whole United States, impose any duties whatsoever upon merchandise in transit between the States, Territories and districts of the Union, when under civil government.

The question is, then, reduced to this: Can Congress, when legislating for the special local purposes of a Territory or district under the centralized civil government of the United States, impose a duty on merchandise going into such Territory or district from the States of the Union? If the rule in the case of the National Bank *vs.* County of Yankton is as we conceive it, Congress cannot do this; because a State of the Union cannot do it, and Congress cannot do, or authorize to be done, in a Territory or district what the United States government and the State together cannot do within the State. This argument assumes, of course, that a State cannot impose any such duty, either by its own power or by consent of Congress. The Supreme Court of the United States has decided many times over that the power of Congress to regulate commerce among the States, Territories and districts of the Union is exclusive, and that the imposing of a duty upon merchandise

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in transit between them is a regulation of commerce. Moreover, the Constitution does not invest Congress with the power to permit the States to impose duties on internal commerce, as it does in the case of foreign commerce, and we must infer, therefore, that such a power does not exist.

But, for the sake of the argument, let us dismiss the principle apparently set up in the case of the National Bank *vs.* County of Yankton, and consider that, in the local government of the Territories and districts of the Union, Congress is limited only by those prohibitions of the Constitution in behalf of individual liberty that are directed against the United States government alone.

From this narrower and more definite point of view, it must be admitted that there is nothing in the letter of the Constitution which would prohibit Congress from imposing a duty for local purposes upon merchandise going from the States of the Union into a Territory or district under the centralized civil government of the United States. But there is no doubt, again, that the exercise of such a power would be in violation of the spirit of the Constitution. The spirit of the Constitution is unquestionably free trade, commerce and intercourse throughout the length and breadth of the territory over which the flag of the United States flies in sovereign power.

The fourth and last case would be where Congress should impose a duty upon merchandise coming into the States of the Union from a Territory or district under the centralized government of the United States. Congress certainly cannot do this under its power of local legislation for the Territories and districts of the Union, because the property interests primarily and directly affected in such a case would be those of the merchants within the States into which such merchandise might be brought by them, and Congress has no power of local legislation within the States.

If, therefore, Congress has any such authority, it must be under its power of legislation for the whole United States — under its power of regulating commerce among the States, Territories and districts subject to the sovereignty and civil government

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of the United States. As we have before pointed out, the power to impose a duty upon merchandise in transit among the States, Territories and districts of the Union may be included in the power to regulate commerce among them, under a literal construction of the provision. But when such a power is exercised, it must be done in accordance with the principle of uniformity. That is, the same rate of duty must be imposed on the same article going from each State, Territory or district into every other. If, however, we construe the Constitution from the points of view of the history of its formation and of its spirit, we shall be compelled to conclude that Congress does not possess the power in question at all; for, I repeat, there is nothing more clearly revealed by a historical and scientific study of the Constitution than that the founders intended to establish freedom of trade, commerce and intercourse in ideas and commodities throughout all land and country subject to the sovereignty and dominion of the United States, and were confident that they had done so. They considered this principle to be the chief bond, the grand cementing bond, of the Union, as it has been and still is.

J. W. BURGESS.

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MARITIME LAW IN THE WAR WITH SPAIN.

THE decision by the Supreme Court of the United States in May, 1900, of the last pending prize case growing out of the war between the United States and Spain enables us to take a definite and comprehensive view of the rules by which the conduct of the parties to the conflict was governed, particularly with reference to important questions of commercial intercourse and the treatment of merchant ships and other private property at sea. In order, however, to present the subject in its proper relations, it is necessary to make certain observations as to the position of the parties prior to the outbreak of hostilities.

I. *Situation Prior to the War.*

By international law up to the present time, the ships of an enemy are lawful prize, but their cargoes may or may not be subject to condemnation. On the other hand, ships of a neutral are not in themselves good prize, but may become so as the result of unneutral conduct,—such as the attempt to break a blockade,—and their cargoes, like those of enemy ships, may or may not be subject to confiscation, according to circumstances. As to the treatment of cargo, the following rules have been acted upon:

1. The goods of an enemy may be seized and confiscated, whether found in an enemy or in a neutral ship.

2. Goods of an enemy, contraband of war excepted, are exempt from seizure and confiscation when on board of a neutral ship. This is known as the rule of "free ships, free goods."

3. The goods partake of the character of the ship: if the ship is neutral, they are free; if the ship belongs to an enemy, they are condemned. This is known as the rule of "free ships, free goods; enemy ship, enemy goods."

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As the last rule is enforced only under special treaty stipulations, it does not at the moment concern us. The great contest has been waged between the first and second rules. The first, that the fate of the goods is determined by the belligerent or neutral character of the owner, without regard to whether the ship is enemy or neutral, was at one time the common law of Europe. But about the middle of the seventeenth century a new rule began to be introduced, and it was stipulated in various treaties that the goods of an enemy should be free when on board of a neutral ship. This rule was subsequently embodied in the marine ordinances of France. It was strenuously advocated by the Dutch. It was embraced in the declaration of the Empress of Russia of 1780, which formed the basis of the first Armed Neutrality. Great Britain generally adhered to the old rule, and in the maritime wars of the eighteenth century the new rule was little observed. In time, however, Great Britain came to accept the new rule. When the Crimean War broke out, she joined France in proclaiming that enemy property on board of a neutral ship would be respected. Then, at the close of the war, came the famous Declaration of Paris of April 16, 1856, by which the signatory powers, — France, Great Britain, Russia, Prussia, Austria, Sardinia and the Ottoman Porte, — with a view "to establish a uniform rule on a point so important," announced their adherence to the rule and engaged to invite other powers to adhere to it. The declaration contained in all four rules, which were as follows:

1. Privateering is and remains abolished.
2. The neutral flag covers an enemy's goods, with the exception of contraband of war.
3. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.
4. Blockades in order to be binding must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

These rules, in accordance with the resolution of the Congress of Paris, were brought to the notice of the powers for

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acceptance or rejection as a whole, and were accepted by all the German states, by the Two Sicilies and the Papal States and indeed by all the powers, except the United States, Mexico, Spain and Venezuela. The United States, whose objection was based upon the fact that, while privateering was to be abolished, the capture of enemy ships and of enemy property on board such ships was still to be permitted, offered to adhere to the declaration, on condition that it be so amended as to exempt private property at sea altogether from capture, save in the case of contraband or of blockade. This offer, which was made in the closing days of the administration of Pierce, was withdrawn by President Buchanan, before any definite action upon it was taken. On the outbreak of the Civil War the United States offered to accept the declaration in its entirety; but this offer came to naught, since it was found to involve the recognition of the right of the United States to bind the Confederacy, which had authorized the issuance of privateering commissions.

As the United States had not become a party to the Declaration of Paris, it is important to ascertain what was its actual position with respect to the rules therein laid down, prior to the war with Spain. As to the first and fourth rules, this question may readily be answered. The rule that blockades in order to be binding must be effective, had always been maintained by the United States as a principle of international law. On the other hand, the United States, while seeking on various occasions to establish the exemption of private property at sea from capture, had maintained the right, so long as such an exemption was not established, to employ privateers, although during the Civil War the government issued no commissions for that purpose. But, as to the second and third rules, the position of the United States has often been imperfectly apprehended. The rule that neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag, has always been acted upon by the United States, save in case of special treaty stipulations to the contrary; but with the rule that free ships make free goods the case is different.

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Mr. Seward, referring to this rule, as embodied in the Declaration of Paris, once said: "We have always practiced on the principles of the declaration." [1] Similar expressions may be found in the works of publicists, but they are hardly accurate. Our courts, except where a treaty prescribed a different rule, had uniformly confiscated enemy property, even when it was seized under a neutral flag. And what is to be said as to the treaties? In only ten of them, made with seven powers, — Algiers, 1816; Morocco, 1787 and 1836; Prussia, 1785 and 1828; Spain, 1795; Tripoli, 1796 and 1805; Tunis, 1797, and Venezuela, 1860, — had the rule of "free ships, free goods" been stipulated for unconditionally, contraband always excepted. Of these the treaties with Algiers and Venezuela had come to an end, and the treaty with Spain had been modified. In six treaties — Russia, 1854; Two Sicilies, 1855; Peru, 1856; Bolivia, 1858; Hayti, 1864, and the Dominican Republic, 1867 — the principle of "free ships, free goods" was recognized as "permanent and immutable," but the contracting parties engaged to apply it only to the commerce and navigation of such powers as should "consent to adopt" it as "permanent and immutable." Of these treaties those with the Dominican Republic and the Two Sicilies had ceased to be in force, and that with Peru had been superseded. In our treaty with Spain of 1819 the principle of "free ships, free goods" was acknowledged, but only in regard to the property of enemies whose governments recognized it. Similar stipulations may be found in our treaties with Italy of 1871 and Peru of 1887, and indeed in the first treaty ever concluded by the United States — the treaty of amity and commerce with France of February 6, 1778. But in the treaty with France they were coupled with yet another stipulation restrictive of neutral commerce — namely, that the goods of the citizens of the contracting parties should be confiscated, if laden on the ship of an enemy, unless they were shipped before the declaration of war or within a certain time afterwards in ignorance of the declaration. These associated stipulations are found more generally than any others in our treaties relating to neutral rights, as

[1] Instruction to Mr. Dayton, Minister to France, September 10, 1861.

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may be seen by the following list: Brazil, 1828; Central America, 1825; Chile, 1832; Colombia, 1824 and 1846; Ecuador, 1839; France, 1800; Guatemala, 1849; Mexico, 1831; the Netherlands, 1782; Peru, 1851; Peru-Bolivia, 1836; Salvador, 1850 and 1870; Sweden and Norway, 1783, 1816 and 1827, and Venezuela, 1836. But at the outbreak of the war with Spain all these treaties, except those with Colombia (1846), Salvador (1870) and Sweden and Norway (1827), had ceased to be in force. With Great Britain we had had no engagement on the subject, except that embodied in the treaty of 1794, which acknowledged the rule of the common law.

Such was the situation on the eve of the war with Spain.

II. *Subsequent Declarations as to Maritime Law.*

April 20, 1898, the President approved a joint resolution of Congress, by which it was declared (1) that "the people of Cuba are, and of right ought to be, free and independent"; (2) that it was the duty of the United States to demand, and that the United States did thereby demand, that Spain at once relinquish her authority and government in Cuba and withdraw her land and naval forces from the island and its waters; (3) that the President was directed and empowered to use the land and naval forces of the United States and to call into actual service the militia, to such extent as might be necessary to carry these resolutions into effect; and (4) that the United States disclaimed any disposition or intention to exercise sovereignty, jurisdiction or control over the island except for the pacification thereof, and asserted its determination, when that was accomplished, to leave the government and control of the island to its people.

On the same day the Spanish minister at Washington asked for and obtained his passports, and the text of the joint resolution was cabled by the United States to its minister in Madrid for communication to the Spanish government. But, before it could be so communicated, the American minister, on April 21, received from the Spanish government a note in which it was

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stated that the joint resolution was considered as an obvious declaration of war and that all diplomatic relations consequently were severed. On April 22 the President issued a proclamation, in which, referring to the joint resolution of Congress, he declared a blockade of ports on the north coast of Cuba from Cardenas to Bahia Honda and of the port of Cienfuegos on the south coast. The blockade was instituted on the same day.

On April 22 the Department of State, in a telegraphic instruction to the diplomatic representatives of the United States, said: "In the event of hostilities between the United States and Spain, the policy of this government will be not to resort to privateering, but to adhere to the following recognized rules of international law." The telegram then recited the second, third and fourth rules of the Declaration of Paris.

April 25, 1898, war was by act of Congress declared to have existed since the 21st, and on April 26 the President issued a proclamation defining the position of the government on questions of maritime law. By this proclamation the announcement that it would not be the policy of the United States to resort to privateering was repeated; and, following this announcement, six rules were promulgated for the observance of officers of the United States during the conflict. These rules, the first three of which embodied the substance of the second, third and fourth rules of the Declaration of Paris, were as follows:

1. The neutral flag covers enemy's goods, with the exception of contraband of war.

2. Neutral goods, not contraband of war, are not liable to confiscation under the enemy's flag.

3. Blockades in order to be binding must be effective.

4. Spanish merchant vessels, in any ports or places within the United States, shall be allowed till May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing

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herein contained shall apply to Spanish vessels having on board any officer in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any despatch of or to the Spanish government.

5. Any Spanish merchant vessel which, prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo, and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with except on the clearest grounds of suspicion of a violation of law in respect of contraband or blockade.

The rules to be observed by the Spanish government were embodied in a royal decree of April 23, 1898. This decree allowed only five days from the date of its publication for the departure of American ships from Spanish ports. It did not in terms prohibit the capture of such ships after their departure, nor did it provide for the entrance and discharge of American ships sailing for Spanish ports before the war. It declared the adhesion of Spain to the second, third and fourth rules of the Declaration of Paris, but reserved the right to issue letters of marque to privateers. Of this reservation Spain afterwards took no advantage. The decree also declared that the government would, for the purposes of cruising, organize a service of "auxiliary cruisers of the navy" composed of "ships of the Spanish mercantile navy" and "subject to the statutes and jurisdiction of the navy." The United States organized a similar service, under the actual command of officers of the navy.[1]

[1] The conditions under which this service was organized are set forth in the case of *The Rita*, 89 Fed. Rep. 763, relating to the distribution of prize money among the officers and crew of the auxiliary cruiser *Yale*, formerly the steamer *City of Paris* of the International Navigation Company. By the act of March 3, 1899, for the reorganization of the U. S. Navy and Marine Corps, all provisions of law authorizing the distribution among captors of prize money or providing for the payment of bounty are repealed. — 30 U. S. Statutes at Large, 1004, 1007.

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As no captures were made by Spain, no opportunity arose for the judicial construction of the rules which that government announced for its guidance. In respect of some of the captures made by the United States, there arose interesting questions which became the subject of judicial decision.

III. *Vessels in Port before or after the Outbreak of the War.*

In the case of the *Buena Ventura* an important application was made of rule four of the proclamation of April 26. The *Buena Ventura* was a Spanish merchant steamship, which was captured by the United States steamship *Nashville*, eight or nine miles off the Florida coast. On the 27th of May she was condemned by the United States District Court for the Southern District of Florida as enemy property.[1] This sentence was reversed by the Supreme Court of the United States.[2] It appeared that the *Buena Ventura* was, at the time of her capture, on a voyage from Ship Island, in the State of Mississippi, to Rotterdam, by way of Norfolk, Virginia, with a cargo of lumber. She arrived at Ship Island March 31, 1898, and sailed for Rotterdam on April 19, with a permit, obtained in accordance with the laws of the United States, to call at Norfolk for a supply of bunker coal. She was captured on the morning of April 22. She made no resistance, had on board no military or naval officer, and carried no arms or munitions of war. It was undisputed that when captured she was on her way to Norfolk, and that her papers for that purpose were in due form. The opinion of the Supreme Court was delivered by Mr. Justice Peckham. The question at issue was whether she could be brought within the exemption of the fourth rule of the proclamation of April 26 as to "Spanish merchant vessels, in any ports or places within the United States." In the course of his opinion Mr. Justice Peckham observed that the vessel in question, as a merchant vessel of the enemy carrying on an

[1] *Buena Ventura et al.*, 87 Fed. Rep. 927. The cargo, being the property of neutrals and not contraband of war, was restored.

[2] The *Buena Ventura*, 175 U. S. 384.

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innocent commercial enterprise at or just prior to the time when hostilities began, belonged to a class which the United States had always desired to treat with great liberality, and which civilized nations had in their later practice in fact so treated. The President's proclamation should therefore receive "the most liberal and extensive interpretation" of which it was capable, and, where two or more interpretations were possible, the one most favorable to the belligerent in favor of whom the proclamation was issued. The provision that "Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing," might, said the learned justice, be held to include (1) only vessels in port on the day when the proclamation was issued, namely, April 26, or (2) those in port on April 21, the day on which war was declared by Congress to have begun, or (3) not only those then in port, but also any that had sailed therefrom on or before May 21, whether before or after the commencement of the war or the issuing of the proclamation. The court adopted the last interpretation. While the proclamation did not in so many words include vessels which had sailed from the United States before the commencement of the war, such vessels were, said Mr. Justice Peckham, clearly within its "intention," under the liberal construction which the court felt bound to give to it. In view of the fact, however, that, at the time of the capture, the proclamation of April 26, without which the vessel would have been liable to condemnation, had not been issued, restitution was awarded without damages or costs.[1]

The effect of the fourth rule of the proclamation of April 26 was again considered in the case of the Spanish steamship *Panama*. This vessel was condemned by the court of original jurisdiction as enemy property,[2] and the decree was confirmed by the Supreme Court.[3] The *Panama*, a steamship of 1432 tons register, owned by the Compania Transatlantica, a Spanish

[1] The Chief Justice and Justices Gray and McKenna dissented from the decision of the court.

[2] *Buena Ventura et al.*, 87 Fed. Rep. 927.

[3] The *Panama*, 176 U. S. 535.

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corporation of Barcelona, Spain, and carrying the Spanish flag, sailed from New York on April 20, 1898, for Havana, Cuba, and certain Mexican ports, with a general cargo and passengers and mails. April 25, when about twenty-five miles from Havana, she was captured by a United States man-of-war. The *Panama* had a commission as a royal mail ship from the Spanish government and a crew of seventy-one men, who had been shipped at various times at Havana; and she carried twenty-nine passengers, all of whom, with the exception of one Frenchman, were Spaniards. Mr. Justice Gray, who delivered the opinion of the Supreme Court, said that the case of the *Buena Ventura* would be decisive of that of the *Panama*, but for the mails and the arms carried by the latter vessel and the contract under which she sailed. Under that contract, which was entered into in 1886, the Spanish government had the right to take possession of the steamer in case of war; and it was required that the ships belonging to the line should be specially adapted to use in war, and that every mail steamer should carry a certain armament "for her own defense." The officers and crew, and so far as possible the engineers, were to be Spaniards. When captured the *Panama* carried two breech-loading Hontoria guns of nine centimeter bore, one mounted on each side of the ship; one Maxim rapid-fire gun on the bridge; twenty Remington and ten Mauser rifles, with ammunition for all the guns and rifles; and thirty or forty cutlasses. The guns had been put on board three years before, and the small arms and ammunition a year or more; and all her armament was carried in compliance with the mail contract, except the Maxim gun and the Mauser rifles. It might be assumed, said the court, that the primary object of the steamer's armament, and in time of peace its only object, was that of defense. The armament, however, was not in itself inconsiderable, and after the capture of the vessel her arms and ammunition were delivered over for the use of the United States navy. The ship was therefore enemy property, bound to an enemy port, carrying an armament susceptible of use for hostile purposes, and herself liable, on arriving in that port, to be appropriated by the enemy for

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such purposes. The intent of the proclamation, continued the court, was to exempt for a time from capture peaceful commercial vessels, and not to assist the enemy in obtaining weapons of war; and it could not be reasonably construed as exempting from capture

> a Spanish vessel owned by a subject of the enemy; having an armament fit for hostile use; intended, in the event of war, to be used as a war vessel; destined to a port of the enemy; and liable, on arriving there, to be taken possession of by the enemy, and employed as an auxiliary cruiser in the enemy's navy.

IV. *Vessels Sailing for an Enemy Port before the War.*

The proper application of the fifth rule of the proclamation of April 26 was considered by the Supreme Court in the case of the Spanish merchant steamer *Pedro*,[1] which was condemned by the court below as enemy property.[2] The *Pedro*, which was a British-built ship and for several years sailed under a British registry, was transferred in 1887 to a Spanish corporation of Bilbao, Spain, and was duly registered as a Spanish vessel. Thereafter she sailed under the Spanish flag and was officered and manned by Spaniards, though she was employed for the transportation of merchandise for hire under the management of a Liverpool firm. Her usual course was to take cargo in Europe for Cuban ports and, after discharging there, to proceed to the United States and obtain cargo for Europe, the round trip occupying about three months. On March 18, 1898, while she was loading in Antwerp for Cuba, she was chartered by an American firm to proceed to Pensacola, Florida, or Ship Island, Mississippi, for a cargo of lumber for Rotterdam or Antwerp. Soon afterwards she left Antwerp with about two thousand tons of merchandise of various kinds for Havana and Cienfuegos. She arrived at Havana on April 17 and, after discharging most of her cargo, sailed on the 22d for Santiago,

[1] *The Pedro*, 175 U. S. 354. The case of the *Guido*, 175 U. S. 382, is similar, and was decided on the strength of that of the *Pedro*, without an extended opinion.

[2] *Buena Ventura et al.*, 87 Fed. Rep. 927.

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Cuba, with a small quantity of general merchandise taken at Havana. On the same day she was captured a few miles off Havana by a cruiser of the United States blockading fleet. Her condemnation was resisted on the ground, among others, that her true destination was a port in the United States, so that she fell within the exemption contained in rule five. The court, Chief Justice Fuller delivering the opinion, declined so to hold. The Chief Justice observed that the *Pedro* remained at Havana from the 17th of April to the 22d, and left on the latter day, which was the day after the war began; that she then had no cargo for any port in the United States, but only for Santiago and Cienfuegos, in Cuba. She had not left a foreign port in ignorance of the "perilous condition of affairs," but must be assumed to have been advised of the imminency of hostilities; nor was she bringing a cargo to the United States, for the increase of its resources and the convenience of its citizens. On the contrary, she was captured while trading from one enemy port to another, being herself an enemy vessel. Under these circumstances, the fact that she was under contract ultimately to proceed to a port of the United States to take cargo for Europe did not, said the Chief Justice, bring her within the exemption of the fifth rule; and he declared that the doctrine of continuous voyages, as laid down by the court on various occasions, did not apply to the case.[1] The decree of condemnation was therefore affirmed.

Mr. Justice White delivered a strong dissenting opinion, in which Justices Brewer, Shiras and Peckham concurred. In this opinion it was argued that the principal voyage of the vessel was from Antwerp to the United States, the calling at Cuban ports being merely incidental; that, although Congress afterwards declared that war should be considered as having existed on and after April 21, it was neither conceived nor known, when she left Havana on the 22d, that a state of war existed; that, just before her departure from Havana, one

[1] The Chief Justice discussed and distinguished the following cases: *The Circassian*, 2 Wall. 135; *The Bermuda*, 3 Wall. 514; *The Springbok*, 5 Wall. 1; *The Joseph*, 8 Cranch, 251; *The Argo*, Spinks's Prize Cases, 53.

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American ship was allowed to sail from that port and, shortly after her departure, another; and that the reference to the fact that the *Pedro* had no cargo for the United States ignored the enlightened moral purpose of the proclamation, and particularly the provisions of the fourth rule, which allowed enemy ships not only to depart from the United States but also to load and take away cargo either for a neutral port or for a port of the enemy not blockaded.[1]

V. *Questions of Enemy Ownership.*

In three well-considered cases, two of which related to vessels and the third to cargo, question was raised as to whether the captured property, whose condemnation was demanded as enemy property, legally bore that character. The first case was that of the *Pedro*,[2] to which I have already adverted. After the preparatory proofs were taken, the master, appearing on behalf of the owners, made a claim to the vessel and moved for leave to take further proof, on the ground that, although a majority of the stock of the Spanish corporation, to which the vessel ostensibly belonged, was registered in the names of Spanish subjects and only a minority in the names of British subjects, one of the latter had possession of all the certificates of stock, in consequence of which he was, under the charter of the company, the sole beneficial owner of the steamer; that the transfer from British to Spanish registry was made solely with a view to facilitate her engaging in commerce with the Spanish colonies; that it was the intention of the British stockholders to restore her to the British registry and flag, whenever the trade might be disturbed; and that the steamer was insured by British underwriters, by whom, if she should be condemned, the loss would be borne. The court below refused to allow further proofs to be taken, and this ruling was affirmed

[1] Mr. Justice White also contended that the decision in the *Argo*, Spinks's Prize Cases, 53, was a decision *in consimili casu*, and should be treated as an authority for the restoration of the *Pedro*.

[2] 175 U. S. 354; *supra*, p. 409.

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by the Supreme Court. The vessel, said the Supreme Court, belonged to a Spanish corporation, had a Spanish registry, was sailing under the Spanish flag and a Spanish license, and was officered and manned by Spaniards. Nothing was better settled than that she must, under such circumstances, be deemed a Spanish ship and treated accordingly.[1] When the stockholders elected to take the benefit of the Spanish navigation laws, they must be held also to have elected to rely on the protection of the Spanish flag. The alleged intention to restore the vessel to British registry, if war should render the change desirable, could not be regarded, since it had not been carried into effect when she was captured. The Spanish ownership having been made out, the facts that the stock of the corporation belonged, legally or equitably, to British subjects, and that the loss would eventually be borne by British underwriters, were, said the court in conclusion, immaterial.

In the case of the *Benito Estenger*,[2] a question was raised as to the validity of the transfer of a vessel from a Spanish subject to a neutral during the war. The *Benito Estenger* was captured by the United States steamship *Hornet*, June 27, 1898, off Cape Cruz, on the south side of the Island of Cuba. December 7, 1898, she was condemned by the United States District Court for the Southern District of Florida as enemy property. The claimant appealed on the ground (1) that she was a British merchant ship, duly documented and entitled to the protection of the British flag, and lawfully owned and registered by a subject domiciled in Great Britain, and (2) that she was engaged in a voyage in behalf of the local Cuban Junta in Kingston, Jamaica, allies of the United States, and was thus captured in the service of the United States, in the performance of friendly offices to the United States forces.

It appeared that prior to June 9, 1898, the vessel was the property of Enrique de Messa, a Spanish subject resident in Cuba, and on that day a bill of sale was made by de Messa to the

[1] Citing Story, Prize Courts (Pratt's Ed.) 60, 66; *The Friendschaft*, 4 Wheat. 105; *The Ariadne*, 2 Wheat. 143; *The Cheshire*, 3 Wall. 231; Hall, Int. Law, § 169.

[2] 176 U. S. 568.

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claimant, Beattie, a British subject, and the vessel was registered as a British vessel, at Kingston, in accordance with the requirements of British law. She had been engaged in trade with the Island of Cuba, and more particularly between the ports of Kingston and Montego, Jamaica, and the port of Manzanillo, Cuba. She left Kingston June 23, and proceeded with a cargo of flour, rice, corn meal and coffee to Manzanillo, where the cargo was discharged. She cleared from Manzanillo, on June 27, for Montego and then for Kingston, and was captured on the same day off Cape Cruz.

The opinion of the court, which was delivered by Chief Justice Fuller, contains various observations on the enemy character, illegal intercourse with the enemy, blockade and other matters; but it may be said that the only real questions in the case were (1) whether de Messa, though a Spanish subject, was to be treated as an enemy, and (2) whether the transfer of the ship from him to Beattie was an actual transfer made in good faith.

As to the first point, there was, said the court, "evidence tending to show that Messa sympathized with the Cuban insurgents, but no proof that he was himself a Cuban rebel or that he had renounced his allegiance to Spain." The cargo of the vessel when captured consisted chiefly of flour, and there was evidence to show that this flour, when landed at Manzanillo, was immediately transferred to the Spanish government warehouse. The court referred to Manzanillo as a "Spanish stronghold," and observed that the delivery of the provisions to the Spanish government constituted, under the laws of war, illicit intercourse with the enemy. It was alleged, however, that de Messa had rendered important service to the United States, that he was the friend and not the enemy of the United States, and that there was an agreement between him and the United States consul which operated to protect the vessel from capture. It appeared that de Messa had endeavored to cultivate friendly relations with the United States consul at Kingston and had given him an old government plan of the province of Santiago and an especially prepared chart of the harbor, in

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return for which he endeavored to obtain from the consul a letter of protection for the voyage which he was about to undertake. The consul declined to furnish the letter, but on June 23 wrote to Admiral Sampson that de Messa offered to give certain information that might be valuable and proposed to be off Cape Cruz on June 30, adding: "You quite understand that in dealing with those people, one is always more or less liable to imposition. I therefore make no recommendation of Messa to you." The claimant asserted, while the consul denied, that protection was given to the voyage by this letter. With reference to this contention, the court said that there was nothing to show that the voyage was undertaken on the strength of the letter, or that it in any way contributed to the capture; nor that the admiral intended to avail himself of the suggestion made in it; "but," said the court,

> we do not go at length into this matter, because we think that no engagement with the United States nor any particular service to the United States was made out in that connection, and so far as appears the vessel was captured in the ordinary course of cruising duty at a time and under circumstances when her liability was not to be denied. Moreover, a United States consul has no authority by virtue of his official station to grant any license or permit the exemption of a vessel of an enemy from capture and confiscation.[1]

Referring to the same subject in another place, the court said:

> Messa's status was that of an enemy, as already stated, and this must be held to be so notwithstanding individual acts of friendship, certainly since there was no open adherence to the Cuban cause, and allegiance could have been shifted with the accidents of war.

As to the question of the validity of the sale, the court said that de Messa's story of the transfer was that he was compelled to sell the steamer in order to get money to live on, and that he made the sale for $40,000, for the whole or a large part of which credit was given on an indebtedness to the firm of which

[1] The court cited and discussed Rogers *vs.* *The Amado*, Newberry, 400; *The Hope*, 1 Dodson, 226, 229; *The Joseph*, 8 Cranch, 451; *Les Cinq Frères*, 4 Lebau's Nouveau Code de Prises, 63; *The Maria*, 6 C. Rob. 201.

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Beattie was a member, and that he was employed by Beattie to go on the vessel as his representative and business manager. Beattie in his testimony said that the sale was *bona fide*, but declined to state of what the payment of the purchase money consisted. The consul of the United States at Kingston testified that Beattie, in conversation, while insisting that the transfer was absolute, admitted that it was effected for the purpose of protecting the vessel. Apparently no money passed. The Spanish master and crew remained in charge. De Messa went on the voyage as supercargo; and in the brief of the claimant's counsel it was declared that the transfer was obviously made to protect the steamer as neutral property from Spanish seizure, while it was admitted that de Messa "still retained a beneficial interest after this sale and transfer of flags." On this statement of facts the court observed that "transfers of vessels *flagrante bello* were originally held invalid," but that the rule had been "modified." The court quoted from Hall's *International Law*, 4th edition, page 525, as containing the correct rule of law, the following passage:

> In England and the United States, on the contrary, the right to purchase vessels is in principle admitted, they being in themselves legitimate objects of trade as fully as any other kind of merchandise, but the opportunities of fraud being great, the circumstances attending a sale are severely scrutinized, and the transfer is not held to be good if it is subjected to any condition or even tacit understanding by which the vendor keeps an interest in the vessel or its profits, a control over it, a power of revocation, or a right to its restoration at the conclusion of the war.[1]

The burden of proof, said the court, was on the claimant. In conclusion, the court held that the requirements of the law of prize were not satisfied by the proofs in question, and that the condemnation was proper.[2]

[1] The court also cited Story's Notes on the Principle and Practice of Prize Courts (Pratt's ed.), 63; 2 Wheat. App. 30; *The Sechs Geschwistern*, 4 C. Rob. 100; *The Jemmy*, 4 C. Rob. 31; *The Omnibus*, 6 C. Rob. 71; *The Island Belle*, 13 Fed. Cases, 168; *The Baltica*, Spinks's Prize Cases, 264; *The Soglasie*, Spinks's Prize Cases, 104; *The Ernst Merck*, Spinks's Prize Cases, 98.

[2] Justices Shiras, White and Peckham dissented.

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In the case of the *Carlos F. Roses*, in which the condemnation of the cargo was demanded as enemy property, a question was raised as to the effect of the endorsement of the bills of lading to neutrals. The vessel itself, a Spanish bark, was condemned as enemy property. The cargo was claimed by Kleinwort Sons & Co., British merchants, of London. It consisted of jerked beef and garlic, and was shipped at Montevideo in March, 1898, by Gibernau & Co., merchants of that place but citizens of the Argentine Republic. The invoices stated that the goods were shipped "to order for account and risk and by order of the parties noted below." In the invoice of jerked beef, the consignees noted below were "the expedition or voyage of the *Carlos F. Roses*" and "Mr. Pedro Pagés of Havana," all Spanish subjects; the consignees of the garlic were "Mr. Pedro Pagés" and "the undersigned," Gibernau & Co. There were three sets of bills of lading issued by the master to Gibernau & Co., — one for that part of the shipment of jerked beef made for account of the vessel, another for that part made for account of Pagés, and the third for the shipment of garlic for the joint account of Pagés and Gibernau & Co. All the bills set forth that the goods were taken for the account and at the risk of whom it might concern. In the ship's manifest the destination of the cargo was stated thus: "Shipped by Pla Gibernau Co. To order." The *visé* of the Spanish consul read: "Good for Havana, with a cargo of jerked beef and garlic." There was no charter party. On the face of the papers the court held that the goods, when delivered to the vessel, became the property of the consignees named in the invoices, and that, as Gibernau & Co. had not appeared and claimed any interest, the whole cargo, which the claimants in fact admitted to be "ultimately destined for Don Pedro Pagés of Havana," must be condemned as enemy property, unless cause to the contrary was shown. Such cause Kleinwort & Co. endeavored to establish, on the ground that, after the shipment of the cargo, they made advances upon it to the amount of about $30,000, in consideration of which the bills of lading, endorsed in blank by Gibernau & Co., were delivered to them,

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with the intent that they should take title to the bills and the cargo, and, on the arrival of the latter at its destination, hold it as security, with the right to dispose of it and reimburse themselves with the proceeds. They contended that in this way they became the lawful owners both of the bills and of the cargo. It appeared, however, that in neither of the two bills of exchange, which were drawn on Kleinwort & Co. for the amount of the advances, was any reference made to the cargo, and that, while two of the bills of lading were alleged to have been delivered to the firm at the time of its acceptance of the bills of exchange, the third, for the greater part of the jerked beef, was not delivered till long afterwards. On these and other circumstances, the court held that the cargo never *bona fide* passed to Kleinwort & Co., but remained the property of Spanish subject, and was liable to condemnation.[1]

VI. *Case of the Fishing Smacks.*

But the most important opinion delivered by the Supreme Court on the question of the liability of enemy property to condemnation was that in the case of the Spanish fishing smacks, the *Paquete Habana* and the *Lola*.[2] The particular point decided was that "coast-fishing vessels, with their implements and supplies, cargoes and crews, unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war." In reaching this conclusion, however, the court, through Mr. Justice Gray, who delivered the opinion, announced and applied a principle which, though often recognized by publicists, has perhaps never before been so clearly and precisely enunciated by a judicial tribunal — that is, the principle of the progressive development of international law. Referring to a decision of Lord Stowell, in which it was said that the exemption of vessels, such as those in question, was "a rule of comity only, and not of legal decision," Mr. Justice Gray said:

[1] Mr. Justice Shiras delivered a dissenting opinion, in which Mr. Justice Brewer concurred.

[2] The *Paquete Habana*, 175 U. S. 677.

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The word "comity" was apparently used by Lord Stowell as synonymous with courtesy or good will. But the period of a hundred years which has since elapsed is amply sufficient to have enabled what originally may have rested in custom or comity, courtesy or concession, to grow, by the general assent of civilized nations, into a settled rule of international law. As well said by Sir James Mackintosh: "In the present century a slow and silent, but very substantial mitigation has taken place in the practice of war; and in proportion as that mitigated practice has received the sanction of time, it is raised from the rank of mere usage, and becomes part of the law of nations."—*Discourse on the Law of Nations*, 38; 1 *Miscellaneous Works*, 360.

It may be hoped that this enlightened declaration will lead our courts to abandon the repetition of the unfortunate *dicta* of Brown *vs.* United States,[1] based upon the theory that it was the peculiar prerogative of a remote age to fix by its customs, however rude and barbarous they may have been, an immutable law, in comparison with which the customs of modern times are merely "comity" or "courtesy," which may be discarded at will.

VII. *Questions of Blockade.*

The first hostile act of the United States, on the outbreak of war, was the blockade of the ports of the north coast of Cuba from Cardenas to Bahia Honda, inclusive, and of the port of Cienfuegos on the south coast. Subsequently, a governmental blockade was proclaimed of all the ports on the south coast of the island from Cape Frances to Cape Cruz, inclusive, and of the port of San Juan, Porto Rico. Various blockades *de facto* were also maintained. The object of a blockade being to cut off all intercourse between the inhabitants of the blockaded place and the world outside, it is a general rule that while a period is allowed — usually of fifteen days — during which vessels may depart either in ballast, or with cargo bought and shipped before the commencement of the blockade, no cargo is permitted to be shipped after the blockade is instituted. In the first proclamation of blockade by the United

[1] 8 Cranch, 110.

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States, which was issued April 22, a period of thirty days was allowed for the departure of neutral vessels from the blockaded ports, but nothing was said as to the cargo. The natural inference would therefore have been that no cargo could be taken on board after the blockade was instituted. But in applying the proclamation to the cases that arose under it, the United States construed it as permitting the taking of cargo during the thirty days; and when the next proclamation was issued, the point was expressly covered by a clause in which it was stated that neutral vessels lying in any of the ports to which the blockade was then extended would be allowed "thirty days to issue therefrom, with cargo." This and other features of the law of blockade were included in General Order No. 592, entitled "Instructions to Blockading Vessels and Cruisers," which was issued by the Navy Department, with the coöperation of the Department of State, on June 20, 1898, for the information and guidance of the naval service.

Three cases involving the law of blockade were adjudicated by the Supreme Court. The first of these was the case of the French steamer *Olinde Rodriguez*,[1] a steamer belonging to the Compagnie Générale Transatlantique. She sailed from Havre June 16, 1898, on her regular voyage, under her mail contract with the French government, for the West Indian ports of St. Thomas, San Juan (Porto Rico), Puerto Plata, Cape Haytian, St. Marque, Port-au-Prince, Gonaives, and return, calling at the same ports. The proclamation declaring San Juan blockaded was issued June 27, 1898. The *Olinde Rodriguez* arrived at St. Thomas July 3, and on July 4 entered the port of San Juan. The United States steamship *Yosemite*, which was lying three miles southwestward of the port, on blockade duty, gave chase, but was unable to reach the steamer before she had turned in and come under the protection of the shore batteries. When on the following morning she came out, the commander of the *Yosemite*, accepting the master's statement that he did not know that the port was blockaded, endorsed on her log an official warning and permitted her to proceed. She duly

[1] 174 U. S. 510.

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completed her outward itinerary and had left Puerto Plata on her return voyage when, on July 17, she was captured by the United States steamship *New Orleans* off San Juan, on the charge of attempting to enter that port. Questions were raised (1) as to the existence of the intent to enter and (2) as to the existence of a lawful blockade. The court below doubted the validity of the blockade, because it was maintained by only one cruiser.[1] The Supreme Court observed that the test was whether the blockade was "practically effective"; that this, though a mixed question, was one "more of fact than of law"; that, by General Order No. 492, "a blockade to be effective and binding must be maintained by a force sufficient to render ingress to or egress from the port dangerous"; that, while it was not practicable to define the degree of danger that should constitute a test, it was enough that the danger was "real and apparent"; and that the question of effectiveness was not controlled by the number of the blockading force. The position could not, said the court, be maintained, that one modern cruiser, though sufficient in fact, was not sufficient in law; nor could a vessel, actually captured in attempting to enter a blockaded port, after a warning entered on her log by a cruiser off that port only a few days before, dispute the efficiency of the force to which she was subjected. The blockade was therefore held to be effective and binding. On the other hand, the court decided that the intent to break the blockade was not sufficiently established; but, in view of circumstances of suspicion, ordered that restitution should be awarded without damages, and that the costs and expenses of her custody and preservation, and all costs in the cause except the fees of counsel, should be imposed on the ship.

The British steamship *Newfoundland* was seized off the coast of Cuba July 19, 1898, by a United States cruiser, on a charge of attempt to violate the blockade of Havana. After the preparatory testimony was taken, an order was made for further proof;[2] and on the subsequent hearing the vessel and cargo

[1] The *Olinde Rodriguez*, 89 Fed. Rep. 105; 91 Fed. Rep. 274.
[2] 89 Fed. Rep. 99.

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were condemned.[1] This sentence the Supreme Court reversed.[2] The case was one chiefly of fact. It was alleged that the vessel was loitering with intent to seize an opportunity to run into Havana, that her usual lights were not displayed and that she was out of her proper course. These allegations were disputed; and the court was unwilling, upon the mere concurrence of a number of "suspicious circumstances," each one of which "standing alone" could be "explained," to hold that guilt was established. The court below, in discussing the proof of loitering, observed that it fell "very far short" of the inculpatory evidence in the cases of certain sailing vessels, which the government had cited as precedents for condemnation; but suggested that proof less full and precise might be accepted in the case of steam vessels, owing to their superior power of movement. "Undoubtedly there is a difference," said the Supreme Court, "but if steam has increased the power of blockade runners, it has increased in greater degree, when conjoined with the range of modern ordnance, the power of blockade defenders. We recently had occasion to consider their power, and decide that a single modern cruiser might make a blockade effective."[3] It was ordered that the vessel and cargo be restored, but without costs or damages.

June 29, 1898, the steamer *Adula*, 372 tons, belonging to the Atlas Steamship Company, a British corporation, was captured by the United States steamship *Marblehead*, on the charge of an attempt to run the blockade of Guantanamo Bay, in Cuba. She was proceeding at the time under a charter, entered into on the preceding day at Kingston, Jamaica, to one Solis, a Spanish subject, at whose disposal she was placed for the conveyance of passengers from the Cuban ports of Manzanillo, Santiago and Guantanamo to Kingston. Accompanying the charter there was a letter of instructions to the master, signed by the agent of the company at Kingston, by which the master was advised that on his arrival at Guantanamo,

[1] 89 Fed. Rep. 510.
[2] The *Newfoundland*, 176 U. S. 97.
[3] The court here cited the *Olinde Rodriguez*, 174 U. S. 510.

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whither he was to proceed direct, he would no doubt find American warships off the port; and he was directed, when signalled, to stop immediately and acquaint the commanding officer with the voyage, in which case, said the instructions, it was not thought that the officer would object to his continuing into port. The steamer was condemned,[1] and the sentence was affirmed by the Supreme Court, Mr. Justice Brown delivering the opinion.[2] The questions involved were (1) the existence of a lawful blockade at Guantanamo, (2) the knowledge of the blockade by those in charge of the vessel and (3) their intent in making the voyage from Kingston. No blockade of Guantanamo was ever proclaimed by the President, the place being east of the line established by the proclamation of June 27. But it appeared that blockades of Santiago and Guantanamo were in fact established by Admiral Sampson early in June, and were maintained till some days after the capture of the *Adula;* and, in view of the operations then being carried on for the purpose of destroying or capturing the Spanish fleet and reducing Santiago, the court thought these blockades must be held to have been lawfully instituted, as an adjunct to such operations. It was contended, however, that, at the time of the capture, the port of Guantanamo was in the possession and control of the United States and that the blockade was thereby terminated. The town of Guantanamo is eighteen miles from the mouth of Guantanamo Bay. The harbor was held by United States naval vessels and by a party of marines who occupied the crest of a hill on the west side of the harbor near its entrance; but the town at the head of the bay was still held by the Spanish forces, as were several other positions near by; and the campaign in the neighborhood was in active progress, and encounters between the American and Spanish troops were of frequent occurrence. Under these circumstances, the court held that "the blockade was still operative as against vessels bound for the city of Guantanamo. The occupation of a city," continued the court, "terminates a blockade because, and only because,

[1] The *Adula*, 89 Fed. Rep. 351.
[2] The *Adula*, 176 U. S. 361.

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it supersedes it; and if a vessel be bound to a port or place beyond, which is still occupied by the enemy, the occupation of the mouth of the harbor does not necessarily terminate the blockade as to such places."[1] The blockade being lawful, the court found, upon the facts, that those in charge of the vessel had actual knowledge of its existence, and that their sailing for the port was unjustifiable and properly subjected the vessel to condemnation.

VIII. *Contraband.*

The question of contraband did not become the subject of judicial controversy during the war with Spain, but it was dealt with in General Order No. 492. Premising its definition with the explanation that "contraband of war comprehends only articles having a belligerent destination as to an enemy's port or fleet," the order specified certain articles as "absolutely contraband" and others as "conditionally contraband." The former were:

Ordnance; machine guns and their appliances, and the parts thereof; armor plate, and whatever pertains to the offensive and defensive armament of naval vessels; arms and instruments of iron, steel, brass, or copper, or of any other material, such arms and instruments being specially adapted for use in war by land or sea; torpedoes and their appurtenances; cases for mines, of whatever material; engineering and transport materials, such as gun carriages, caissons, cartridge boxes, campaigning forges, canteens, pontoons; ordnance stores; portable range finders; signal flags destined for naval use; ammunition and explosives of all kinds; machinery for the manufacture of arms and munitions of war; saltpeter; military accouterments and equipments of all sorts; horses.

The "conditionally contraband" were:

Coal, when destined for a naval station, a port of call, or a ship or ships of the enemy; materials for the construction of railways or telegraphs, and money, when such materials or money are destined for the enemy's forces; provisions, when destined for an enemy's ship or ships, or for a place that is besieged.

[1] The court cited, as decisive on this point, The *Circassian*, 2 Wall. 135.

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By the Spanish royal decree of April 23, 1898, contraband was defined as follows:

> Cannons, machine guns, mortars, guns, all kinds of arms and fire-arms, bullets, bombs, grenades, fuses, cartridges, matches, powder, sulphur, saltpeter, dynamite and every kind of explosive, articles of equipment like uniforms, straps, saddles and artillery and cavalry harness, engines for ships and their accessories, shafts, screws, boilers and other articles used in the construction, repair and arming of warships, and in general all warlike instruments, utensils, tools and other articles, and whatever may hereafter be determined to be contraband.

But for the last clause, which seemed to be capable of rendering the preceding specific enumeration nugatory, this paragraph would be open to little objection. Soon after its promulgation the operation of the decree was restricted, on the request of the Italian government, by a special dispensation in favor of sulphur, which is obtained chiefly from Sicily.

IX. *Restoration of Commercial Relations.*

By the strict laws of war all trading between enemies is prohibited. On April 27, 1898, the Treasury Department issued to collectors of customs certain instructions, which were prepared in consultation with the Department of State. These instructions forbade the clearance of an American vessel for a Spanish port, but the only restriction they placed upon the clearance of any other vessel for such a port was that the vessel should not carry cargo of contraband of war or of coal. Thus the clearance of a neutral ship with an American-owned cargo for a Spanish port was permitted, and to this extent trading between enemies was allowed.

By the protocol signed at Washington August 12, 1898, provision was made for the immediate suspension of hostilities, as a preliminary to the conclusion of peace. The blockades were immediately raised; and on August 17, 1898, the Department of State, in response to inquiries made on behalf of the Spanish government, declared (1) that no obstacle would be inter-

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posed to the reëstablishment of the postal service by Spanish steamers between Spain on the one side and Cuba, Porto Rico and the Philippines on the other; (2) that no objection would be made to the importation of supplies in Spanish bottoms to Cuba and the Philippines, but that it had been decided to reserve the importation of supplies from the United States to Porto Rico to American vessels; and (3) that a Spanish steamer, chartered by French merchants and then lying at Havre, would be permitted to proceed to Philadelphia and to take mineral oil for industrial purposes, provided it was not to be transported to Porto Rico. These answers, it was added, were given with the understanding that American vessels would not for the time being be excluded from Spanish ports, as well as upon the understanding that, if hostilities should at any time be renewed, American vessels that might happen to be in Spanish ports would be allowed thirty days in which to load and depart with non-contraband cargo, and that any American vessel which, prior to the renewal of hostilities, should have sailed for a Spanish port would be permitted to enter such port and discharge her cargo, and afterwards forthwith to depart without molestation, and, if met at sea by a Spanish ship, to continue her voyage to any port not blockaded.[1] These conditions were accepted by the Spanish government,[2] and commercial intercourse was accordingly restored.

J. B. MOORE.

[1] Mr. Moore, Acting Secretary of State, to M. Cambon, French Ambassador.
[2] M. Cambon to Mr. Moore, September 6, 1898.

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COUNCIL GOVERNMENT *VERSUS* MAYOR GOVERNMENT. I.

I.

THE most striking tendency in the recent history of American municipal government is that toward increasing the power and responsibility of the mayor. There is scarcely an important city which has not modified its charter in this direction within the past quarter-century. The practically exclusive control which the city council formerly exercised over the executive administration has been by gradual steps almost completely taken away; while even what have always been considered essentially legislative functions, especially those pertaining to the finances, have been in no small measure transferred to the city executive. At the same time, there has been a rapid centralization of the executive power itself. Heads of departments were formerly for the most part placed in office, or at least retained there, regardless of the will of the incumbent mayor; but by the most modern charters they are nearly all made appointive and summarily removable by him. In New York, Boston, Chicago, Cleveland and several other leading cities, the right of confirming appointments, the last remaining means by which the council could exercise some direct control over the *personnel* of the executive, has now been abolished, while in other municipalities it is retained only as a concession to tradition and conservative influences.

This great change in municipal organization, moreover, has not been, like so many others, brought about simply by thoughtless, partisan or corrupt legislative tinkering. While in many cases such influences have doubtless shared in the movement, it has yet met the approval — though in differing degrees and according to different lines of reasoning — of very many of those who have disinterestedly sought better muni-

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cipal government. It has the sanction of such names as those of Seth Low, Gamaliel Bradford, Edmund J. James and Frank J. Goodnow. The latest and most authoritative utterance as to the relation of the council to the mayor is to be found in the report of the municipal program committee of the National Municipal League, published with the approval of the League in 1899. The committee does, indeed, maintain the desirability of rehabilitating the decaying city council, but urges that this body be confined strictly to legislative functions; while the probability is that the suggested methods of increasing its influence would prove relatively ineffective in practice. The proposed general municipal charter provides that the mayor shall have the sole power of appointing and removing all executive officers except the comptroller; and that he shall be given also the exclusive right to initiate appropriation measures, leaving the council only the authority to reduce items of the estimates submitted.

Had the increase in the prerogatives of mayors not been accompanied by a very great weakening, often by the almost complete annihilation, of the power of our city councils, it would perhaps call for less comment. Could it be considered as having merely introduced that separation of powers which is the main principle of our constitutional law; had city legislatures retained a prominence corresponding to that still possessed by Congress and state legislatures, — we should have no new problem in the science of politics. We should have simply the old question, whether or not this system, with its checks and balances, is after all more advantageous than that which gives the ultimate control and responsibility to the representative body alone; with the additional inquiry whether, granting the desirability of the separation of powers in the higher grades of government, it is equally feasible and desirable in the city. But the actual standing of the city council is far different from that of our state and national legislatures. Already in many cities either the council has been deprived directly by statute of all save relatively insignificant powers, or in practice, despite the legal form of authority, its real influence

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has dwindled almost to zero. In both New York and Brooklyn, prior to their consolidation, we saw "a local elective legislature with practically no power"; while under the Greater New York charter the sphere of the council is apparently increased by little more than "certain obstructive powers," which are scarcely likely in actual working to restore it to a position of influence.[1] The council still retains in most cities the relatively unimportant function of making ordinances concerning the conduct of citizens — as to nuisances, use of streets, *etc.* It still grants franchises, though often the executive participates very largely in this power. It still has some control over expenditure, although, under the new practice of giving the initiation of financial measures solely to the executive, the council has often ceased to have much real weight in determining the budget.[2] Other powers than these, as regards either the broad policies or the details of administration, the council in many cities has almost none: the state legislature or the municipal executive has absorbed them all. Unless there shall be a turning in the tide, the once all-powerful city council seems likely to become a mere useless fifth wheel in the American municipal chariot.

Some, indeed, of the friends of good city government have watched this emasculation of the council with regret and apprehension and have advocated measures, usually rather ineffective, for restoring some of its pristine vigor. But others have seen in this process only the steady withdrawal of power from dangerous hands to place it in safer ones. The council is widely discredited. The name of alderman is used as if synonymous with "boodler" and "ward-heeler." "It is not entirely clear,"

[1] H. E. Deming, "The Legislature in State and City," Louisville Conference for Good City Government, p. 91.

[2] In New York City before the consolidation, the law itself had taken from the council all but merely advisory control over the expenditures, and its advice was so invariably disregarded that in despair it ceased to volunteer any whatever. It is also noteworthy that, though the Greater New York charter gave to the Municipal Assembly the right to reduce the estimates submitted, the tradition of inactivity was so strong that that body in 1898 passed without the reduction of a single dollar in any item a budget presented to it which carried the enormous sum of ninety-five million dollars. — New York City Record, 1898, p. 5157.

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says Seth Low, speaking of New York and Brooklyn, "that either city would suffer under existing conditions by the abolition of its common council." [1] Mr. Low utters this with something of a tone of regret, but others have boldly and cheerfully advocated this very step. Says one recent writer:

> Because legislative bodies are always inefficient administrators, it does not follow that administrators are poor legislators. . . . It has yet to be shown that aldermen have ever filled a useful function in a modern American city.[2]

Doubtless this last is the position of an extremist, which would meet little endorsement. Nevertheless, the conspicuous facts of the great reduction of the power of the council, of the progressive degeneration of its character, of the growing distrust with which it is viewed, challenge consideration. They appear to demand a thorough study of the arguments which have been advanced in favor of the transfer of the centre of gravity of municipal administration from the council to the mayor. They confront us with such questions as these: Is this transfer of power consistent with democratic principles? If not, are we yet forced to it by the unripeness of our city populations for democracy? Is the movement a temporary or a permanent one? If we have gone too far in taking a large part of properly legislative work from the council and giving it to the executive, can we partially retrace our steps and secure a practicable division of the legislative from the executive sphere? Can we prevent the council from swallowing the mayor, to use Dr. Albert Shaw's phrase,[3] if we attempt to check the mayor in his process of engorging the council? If this balance of powers be found impossible, is not perhaps the logical and democratic solution to be found in making a numerous representative body, rather than a single individual, the controlling and responsible authority in municipal government? We shall best be able to

[1] Seth Low, "The Government of Cities in the United States," The *Century*, XX, 730.

[2] H. DeF. Baldwin, "Municipal Problems," *Municipal Affairs*, III, 3.

[3] Shaw, Municipal Government in Great Britain, p. 63. He thinks that the one result or the other is inevitable.

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consider these questions, if we take up, one after another, the arguments which have been brought forward in favor of increasing the power and responsibility of the mayor.[1]

II.

We are first of all confronted with the argument from our own municipal experience. We are told that the American city council has proved itself in practice unfit to be trusted. Its powers have been taken away only because it has abused them. Whatever methods of election or of organization have been tried, it has been found impossible to secure good councilmen. The system of council rule worked well enough in the early days, with simple administrative problems and a comparatively high qualification for the electorate. But with the introduction of universal suffrage, the influx of foreign immigrants, the intrusion of party politics and the growth of municipal functions, the system broke down completely. These statements are usually made as if they were self-evident commonplaces of history. Seldom is any detailed study brought to their support. But historical evidence must be handled with the greatest care in order to be conclusive. Failure rightly to analyze causes and effects and to take account of differences in conditions is apt to vitiate our reasoning. Not yet have we sufficient knowledge of municipal history or sufficient outlook into the future to justify dogmatic conclusions as to the relative success of council rule and mayor rule. A few considerations may be presented, however, which show how comparatively weak is this argument in favor of the mayor system from our experience in city government.

It is very generally admitted, nor need we stop to prove, that up to the end of the third or fourth decade of this century

[1] These arguments have been presented by so many different writers and are so generally familiar that it has not seemed necessary, in most cases, to quote exact phraseology or to give references to specific authorities. I have tried to state the various arguments in favor of the mayor system as clearly and forcibly as possible, and have not consciously omitted any point that appeared to have weight.

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American cities, which were then usually under the practically absolute control of the council, were more honestly and, in proportion to the technical advancement of the time, more efficiently governed than they are to-day. Indeed, the influence of the example of our federal Constitution must be looked upon as probably the chief explanation of the movement to withdraw executive powers from the council. In 1829 New York was already a very considerable city, having a population of more than 200,000 inhabitants. The city convention which met at that time was unable to advance charges against the municipal administration in the faintest degree comparable to those which are made every day against the government of our present cities possessing equal population. Nevertheless, some evils were found; and the natural remedy seemed to the charter framers, imbued with the principles of our national and state constitutions, to separate the executive from the legislative powers. But we have not the slightest proof that they correctly diagnosed the disease or prescribed the right remedy. From that time on, in fact, both council and administrative officers degenerated rapidly; and while this may be partly explained by the general lowering of the tone of politics and by the great influx of foreigners, no small share in the demoralization of the council, at least, was doubtless due to the weakening of its powers. After the still greater reductions in its authority by the charters of 1849 and 1857 and by the growing interference of the state legislature, the council fell yet more markedly in character. Each abuse of some remaining function was made the signal for the transfer of that function to the state government or to an independent commission.[1] There was no attempt to concentrate the powers thus taken away from the council in the hands of the mayor, or indeed to establish in any way harmony of policy and centralized responsibility for action. The result was a municipal government so disorganized that inefficiency and corruption could not but

[1] For fuller description of the process by which the council in New York was deprived of its powers and of the effects of that deprivation, see the writer's Finances of New York City, chaps. iii and iv.

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increase appallingly. It was with a view to bringing some order into this chaos that later legislation gradually placed the various branches of the city administration under the control of the mayor.

The history of the decay of the authority of the municipal assembly has been much the same in other cities as in New York, though the process has gone on with different degrees of rapidity and completeness in the various municipalities. We Americans too often fail to seek and to root out the fundamental causes of our political evils. We rush for some external palliative, some patent nostrum. Not one of the steps by which our city councils were robbed of authority was taken on the basis of careful study of political principles. Each was a makeshift remedy for an immediate ill. Nor was there usually the faintest evidence that any of the better results which occasionally followed such changes were really due to them. No form of government could, under the conditions then any more than now, give thoroughly good administration. Had the council been left with the main authority, we should undoubtedly have had poor enough government; but there is no certainty whatever that it would have been better under the most thoroughgoing one-man sway. We have, indeed, every reason to believe that a continuation of the earlier council rule would have been better than the system which actually became established in most of our cities during the years from about 1840 to 1880 —a system characterized by hopeless diffusion and confusion of power and responsibility, legislative as well as executive, among state legislature, council, mayor and well-nigh independent administrative officers and boards. Every candid thinker must admit the truth of this statement; yet we are too prone to forget that the form of government for whose evils concentration of power in the mayor was introduced as a remedy was very far from being genuine council government. Infinitely better is it to centralize authority and responsibility than to scatter and dissipate them; but it does not immediately follow that it is better to centralize them in one man than in a representative council. Because council

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government was not perfect and because mayor government has been more satisfactory than the hodge-podge which preceded it, many have drawn the quite unwarranted conclusion that rule by the council is necessarily and always inferior to rule by the mayor. We have at present in the United States no city where the council is the one controlling power, so that comparison of this system with the system of one-man government, both working under similar conditions, is impossible. Some approach toward the council system is, indeed, found in a few of our cities; and in those where the council has the greatest power, such as Minneapolis and Atlanta, the integrity and efficiency of the administration, according to competent local observers, compare most favorably with those of other American cities.[1] But it cannot be pretended that this evidence constitutes a strong argument in favor of the council system — any more than the experience of other cities with corrupt councils or with mayors, good or bad, is conclusive as to the best form of city government. There has been far too little method in American municipal experiments, and far too little scientific recording of their results, for us to hope to gain much information from our municipal history.

The fallacy of the line of reasoning which we have been criticising is aggravated by the fact that, in pointing out the results which have come from centralizing power in the mayor, no account is made of the growth of public sentiment demanding better government and compelling the choice of worthier men for office — men who would have made improvement in the administration under any form of organization. Flagrant abuses from time to time stir up the "good citizens," who are always in the majority, if they will only act and act together. A wave of reform overturns with the same sweep forms and individuals; for the American reformer is never content unless he tinkers the governmental machine at the same time that he puts new men in charge of it. The improvement which comes perhaps solely from the change of men is then attributed

[1] Minneapolis Conference for Good City Government, p. 93; Baltimore Conference, pp. 96–101.

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primarily to the change in form. That this is a fairly correct description of what has taken place in recent years in some American cities which have introduced the mayor system seems to be evidenced by the fact that the character of the government has often been but temporarily improved after the change, or at least has fluctuated with the rise and fall of the reform spirit among the citizens. It is too early to judge finally the practical working of the system. Undoubtedly there has been some permanent increase in the interest of the people in municipal government and in their devotion to the civic welfare, and this fact will tend in itself to give us a higher level of city administration. But the path of one-man rule is not all rose-strewn. Many bad mayors have got into power and, by the abuse of their immense prerogatives, have given administration scarcely equalled in extravagance, inefficiency and corruption, during the worst periods of the earlier régime. Nor have the people always been able, — as they should have been, according to the theory of the one-man system, — by at once placing the blame where it belonged, to overthrow the unworthy ruler and establish an upright one in his stead. The untrammelled mayor, with his enormous patronage, his control of the election machinery, his ability often to conceal from the public the true character of his administration, has not unfrequently succeeded in securing reëlection for himself or triumph for his ring. Only a few instances of the unsuccessful working of mayor rule can be cited from among the many whose existence any candid student of recent municipal history must admit.

It must be confessed that Boston has for the most part elected efficient and upright mayors during recent years, but other cities have not been so fortunate. In New York City the prominence of the mayoralty has at times driven even Tammany Hall to put up good men, such as Grace and Hewitt. But within this very decade, in the face of the growing reform sentiment, that organization has elected to the mayor's chair for two successive terms an "illiterate and obscure man" who filled all vacant offices with "adventurers of the lowest character"; while under the rule of his successor, also elected by

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Tammany, a legislative investigating committee unearthed in the police department scandals such as scarcely any other civilized city has ever known.[1] The first election under the Greater New York charter resulted in the defeat of Seth Low, well known to have been the best mayor Brooklyn had ever had, by a man who has followed almost absolutely, in his appointments and his general policy, the dictation of the Tammany boss and whose connection with the Ice Trust has been by no means creditable.

In Brooklyn the first election under its famous "model charter" brought Mr. Low into the mayor's chair, but for eight years after he left office "mayors were elected, and appointments were made by them, on party grounds";[2] while the administration of the city was "believed to be feeble and untrustworthy, its public moneys and franchises to be unscrupulously wasted. . . ."[3] This last is the admission of a strong advocate of the mayor system, who insists that it was even then working well in Brooklyn, for the reason that the people knew precisely who was at fault, but who fails to show us why they did not straightway put better men into office.

Philadelphia, too, since the great increase in the power of the mayor in 1887, has found it impossible, with perhaps a single exception, to elect good men to that office, while the character of the council has fallen lower than ever before.[4] A state investigation, made in 1897,[5] revealed many abuses — favoritism and extravagance in letting contracts, interference by the police in elections and connivance by them in all sorts of violations of law and, above all, a complete undermining of the civil service reform system, this last evil being emphatically corroborated by the secretary of the National Civil Service Reform Association. The recent attempt of the mayor and

[1] E. L. Godkin, "The Problems of Municipal Government," *Annals of the American Academy of Political and Social Science*, IV, 857.

[2] D. B. Eaton, The Government of Municipalities, p. 188.

[3] E. M. Shepard, "The Brooklyn Idea in City Government," *Forum*, XVI, 38.

[4] Mayor *vs.* Council, p. 28, quoting A. K. McClure, editor Philadelphia *Times*.

[5] "Notes on Municipal Government," *Annals of the American Academy of Political and Social Science*, X, 122.

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city officers to blackmail Mr. Wanamaker illustrates the character of the administration; while the lease of the gas works in 1897 appears to have been accompanied by wholesale corruption. Philadelphia's expenditures rose from $13,273,000 in 1887 to $23,491,000 in 1895.

Similar, too, has been the experience of several smaller cities which have changed to the one-man system. Indianapolis, since the adoption of her centralizing charter in 1891, has not elected a single mayor who has obeyed the spirit, or even the letter, of the laws regulating the civil service. All appointments have been made on strictly partisan grounds.[1] Four years after Quincy, Mass., greatly increased the power of the mayor, Mr. Gamaliel Bradford, who had specially urged the change, was forced to confess that "extravagance of expenditure, local jobbing and caucus politics are as rampant as in any other city in the state." [2] In Cleveland the mayor has abused his appointing power for the sake of aiding his own political ambitions.[3] Nowhere, in fact, can the advocate of mayor domination, if he be candid, point to anything like thoroughly and continuously good administration where that system has prevailed. Temporary improvement has often followed a change to mayor rule; permanent improvement even has resulted in certain cases from doing away with the anomalies and complexities of earlier charters; but the actual success of the centralization of power has fallen very far short of fulfilling the promises which were held out to us.

III.

We must conclude, then, that American experience in itself does not clearly prove the superiority of the mayor system over the council system of city administration. What may we learn from the experience of Europe?

[1] Mayor *vs.* Council, p. 27; S. G. Swift, in Indianapolis Conference for Good City Government, 1898.

[2] G. Bradford, "Our Failures in Municipal Government," *Annals of the American Academy of Political and Social Science*, III, 699.

[3] Circulars of the Cleveland Municipal League.

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It is admitted on all sides that the towns of England, of Germany, of France, even of Italy, are far better governed than our own. They have well-paved and clean streets, pure water, proper sewage disposal, scientific health administration, honest and efficient police. They have extended their functions more widely than American cities; they have secured for their people cheap gas and electricity from municipal plants, pure food from dealers using municipal markets and abattoirs, cleanliness from public baths and wash-houses. The office of city councillor in these European municipalities is an honor, not a disgrace. In the council chambers of Glasgow, Birmingham, London, Berlin, Dresden, Paris sit statesmen prominent in national politics, scientific and professional men of world-wide fame, leading men of wealth and business, well-known philanthropists, side by side with the best representatives of the working classes. The executive officials are men of high professional ability and experience. Scarcely a whisper of scandal is ever breathed touching the integrity of city authorities, legislative or executive. All these results, so different from those which are met with in American cities, are found under a system of most thoroughgoing council rule. To make clear how complete is the control of the council, it may be worth while here to describe briefly its position in the government of the municipalities of the three leading European countries, even at the risk of repeating much that is more or less familiar to students of municipal affairs.

While in Germany and France the control of the council over the executive is perhaps almost as absolute as in Great Britain, it is in the latter country that the council takes the most active and direct part in the executive administration.[1] It elects the mayor and all other executive officers. The mayor's position is one of dignity, rather than responsibility, though he is expected to have had long experience in the council, and his influence in the various committees, of all of which he is an ex-officio member, is usually considerable. He has no veto. The other leading executive officers are professional adminis-

[1] Full description in Shaw's Municipal Government in Great Britain, chap. ii.

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trators, serving for indefinite terms, but strictly subject to the direction of the council. The council divides itself into committees corresponding to the various departments. These committees actually consider and decide all administrative questions in which discretion is involved. A thousand and one matters which in an American city would be disposed of by executive officers — the appointment of a clerk, the increase of a minor salary, the suppression of some relatively unimportant specific nuisance, the approval of a small bill — come before the council committees. Not that the executive has no power or influence: the trained and experienced administrative officials not only carry out the will of the council and its committees, but advise and guide them. The council or its committee for the most part simply controls and approves: it does not hamper the executive officers in the proper performance of their duties. The committees themselves are subject to the general body of the council, by which their every action, which must be recorded in written minutes, has to be finally approved. The council thus controls and directs the entire administration of the city, and itself participates in it to no slight degree. It is the administrative, as well as the legislative, head. The city government is a unit, and the council is its life.

We can probably learn less from French municipal organization than from that of England or Germany. Paris,[1] whose achievements in administration are at the same time the most splendid and the best known to Americans, is very largely ruled by two executive officers, the prefect of the department of the Seine and the prefect of police, both of whom are appointed by the central government and are by no means thoroughly under the control of either the people of the city or the council. There is little doubt that the success of their administration is due rather to the high training and efficiency of the French national bureaucracy than to the system of centralized power *per se*. The most ardent advocate of municipal centralization would scarcely urge it in connection with such extensive deprivation of home rule as exists in Paris.

[1] Shaw, Municipal Government in Continental Europe, pp. 23–25.

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In other French cities[1] the council chooses from its own body the mayor and a number of executive "adjuncts." The mayor is, indeed, to some degree independent of the council and has much greater power than in England. He assigns administrative tasks to his adjuncts, and himself appoints and directs the other executive officials. He has, however, no veto. The council, moreover, has a far more direct and thorough control over the administration than in America, although it does not itself perform such relatively minute administrative functions as does the English council. "The mayor and his adjuncts constitute in effect a standing executive committee of the council." Concerning the actual working relations between legislative and executive authorities, as well as concerning the concrete results achieved for the welfare of the French towns, we have less full and definite information than could be desired; but we have reason to believe that in efficiency and purity their government greatly excels that of our own municipalities.

In the German city[2] we find a primarily executive board (the *Magistrat*), side by side with a primarily legislative council or representative assembly. But the two work in the closest harmony and conjunction, not independently; while the ultimate authority for the entire administration rests with the latter body. It elects all the members of the *Magistrat*, half of whom are paid professional administrators holding for twelve years, the remainder unsalaried and having a six years' term. The council may remove these executive officers, but only for cause and subject to appeal to the courts. The actual relations between the council and the executive board are essentially those which exist between a parliament and its cabinet. The *Magistrat* is at the same time the leader and the servant of the legislative body. It initiates nearly all measures which

[1] Shaw, Municipal Government in Continental Europe, pp. 165, 173–176.

[2] Shaw, pp. 311–319. There are minor variations in organization among the various states and provinces, but the general principles are everywhere the same. The description here given applies especially to the cities, including Berlin, of the seven older Prussian provinces. See Städteordnung der sieben östlichen Provinzen.

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come before the council: it guides legislation, as well as carries on administration. The council, on the other hand, has the most complete control over the *Magistrat* and the administration. It appoints (or confirms) the lower executive officers, as well as members of the *Magistrat*. Its approval is necessary for every act of the municipality, save the most unimportant. Nor is its action purely perfunctory: the council is a vigorous, aggressive, critical body, which in very fact decides all important discretionary questions and vigilantly holds the executive responsible for every detail of administration. At every session members of the *Magistrat* attend to propose and discuss measures; and their presence makes it easy for the council to question and direct them as to the departmental services. Nor is this all the share of the council in the administration. At the head of each executive department is placed a committee composed of a few members of the chief executive board chosen by that body, a larger number of members of the council chosen by it and usually a few additional citizens selected for their special ability for the particular service. These committees take almost, if not quite, as active a part in the detailed work of administration as do the English council committees, although their action is strictly subject to the approval of the executive board. The councilmen, through their membership on these committees, acquire a familiarity with administrative matters which makes it possible for the council, in its general sessions, to exercise far more effective control over the *Magistrat* than would otherwise be the case. We thus see that the German municipal organization has all the advantages afforded by the cabinet system in national government, without the disadvantage, so often experienced, of instability on the part of the executive. Skilled leadership in legislation and trained executive service are combined with thorough control by the people, through their representative assembly, over the entire government, on its administrative as well as on its legislative side.

The cities of the leading European countries have, then, all adopted the policy of making the council the one dominating

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responsible authority in municipal government. They have committed the duty of carrying out the council's commands to trained and permanent officials, but these are wholly subject to the control of the representative body. Responsibility for the city government is perfectly definite. The duty of the citizens is completed when they have elected good councilmen. It remains only for them to keep a watchful eye on their representatives, to bring public opinion to bear upon them, to reward or punish them at the elections. Other important features of the organization of European towns are that the council is always a body of considerable size and that its members hold for relatively long terms, so that they have time to become experienced in their work; while in England and Germany this advantage is sought still further, by providing that only one-third of the councilmen shall retire at one time. All of these devices doubtless contribute to the success of council government, and all of them may probably be wisely copied in America. The most essential thing, however, so the citizens of the municipalities over the ocean themselves assure us, is the thoroughgoing centralization of power and responsibility in the representative council.

But we are told by many American municipal reformers that the success of European city governments is due not so much to the form of their organization as to the favoring conditions under which they work. Their system of organization is, it is said, at least quite unfitted for American cities with their far more difficult conditions. Nay, more: if, as is likely, conditions abroad shall change to become more similar to our own, Europe may yet have to take lessons in municipal government from us.

How far are these statements to be accepted? Doubtless there are important differences in the conditions under which European and American municipalities work that do in part account for the differences in the results accomplished. But has not the importance of these differences perhaps been somewhat exaggerated? May not the nature of the European municipal organization itself, after all, have something to do

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with the superiority of its working? May there not be such a thing as a system which is best under all conditions? If the statesmen of countries differing widely in the character and history of their people and institutions have, after careful study and experiment, worked out for their respective city governments the same broad principles of organization, are we justified in rejecting offhand the reasoning which they have followed and in neglecting the experience of the municipal governments which they have established? Even though our conditions be more difficult to cope with than those of European towns, does it follow that they demand an entirely different form of organization? Has it ever been satisfactorily proved that the mayor system of government is an easier one to work successfully against opposing circumstances than the council system? Ought we not to seek to correct our unfortunate conditions by more direct means, to strike at the very root of our troubles, rather than to attempt to adjust organization to them? Let us consider the nature of the differences between American and European municipal conditions which are pointed out to us. They may be grouped under three heads: (1) differences in rapidity of growth; (2) differences in the character of the electorate; (3) differences in the general political spirit of the people, and especially in the spirit and methods of political parties.

1. It has already been sufficiently demonstrated by Dr. Shaw[1] and others that the superiority of the administration of European cities is not to be explained by the statement that they have grown less rapidly than those of America and have had more time in which to work out their problems. While it is true that in the beginning of this century the towns of Europe were much larger than our own then were, yet they had at that time made scarcely the faintest beginnings toward adopting their present form of organization or toward properly performing their present functions. Hence they had no accumulated ages of experience which were denied to us. Moreover, the growth of population in the cities of Europe during the

[1] Shaw, Municipal Government in Continental Europe, pp. 293–297.

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past half-century has been almost, if not quite, as rapid as in those of the United States. On both sides of the Atlantic the great problems of city administration are essentially of recent origin.

2. Greater stress is ordinarily laid upon the differences in the character of the electorate between European and American cities. In Great Britain and Germany, at least, the suffrage is confined to taxpayers, while in the United States universal manhood suffrage prevails. Moreover, our municipal voters, it is said, are more ignorant, more heterogeneous and less devoted to the welfare of their city, the immense proportion of the foreign-born especially tending to lower the level of citizenship. What may be said of these arguments?

Concerning the restriction of the suffrage, it may first of all be pointed out that property tests for the municipal franchise do not exist in France, yet municipal government in that country is almost certainly much superior to our own. Moreover, in England and Germany such tests exclude a much smaller part of the adult male population than some of our writers have apparently supposed. In England every person who for the space of one year owns or rents premises of any sort, however insignificant, in a municipality, is taxed in proportion to their rental value. Provision is made that landlords may compound for the taxes of their tenants. But the occupier, whether he pays the tax himself or has it paid for him, is entitled to the municipal franchise. We find that in Manchester almost exactly one person in six has the right to vote,[1] as compared with a proportion of about one in five in New York City. In Prussian cities, too, taxation reaches most adult men; and there is provision by which, for the purposes of suffrage, a minimum tax payment is attributed to practically all others, even when the sum is not actually levied. The proportion of voters to the total population is slightly larger in Berlin than in Manchester (17.2 per cent).[2] To be sure, the three-class

[1] Official Handbook of Manchester and Salford, 1899, p. 348. *Cf.* Shaw, Municipal Government in Great Britain, pp. 39–44.

[2] Jastrow, Das Dreiklassensystem (Berlin, 1894), p. 114.

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franchise system of German cities gives to the wealthier citizens an immensely preponderating influence — an influence which they sometimes abuse — but it is not found that the voters of the lower class send to the city councils men by any means so unworthy as those who regularly obtain seats in our municipal legislatures. In neither Germany nor England is any higher property qualification demanded from members of the council than from voters, though in the former country it is required that one-half of the members elected by each class of voters shall be house-owners.

Although thus their importance is often exaggerated, these limitations on the suffrage, both in England and Germany, undoubtedly do exclude the most worthless and dangerous elements from the electorate. Universal suffrage has scarcely approved itself as the wisest system for our American cities, where so many citizens have no fixed abode or means of support and are ready to make merchandise of their political rights. But the evident remedy for our difficulties is to take away the ballot from the lowest grade of citizens, rather than to introduce the mayor system of municipal organization. We must observe, however, that the effect of the European tax-paying requirements is far different from that which, under our present system of taxation, would result in American cities from confining the franchise to taxpayers, as has been so often advocated by would-be reformers. The proportion of men who pay taxes is very much smaller in our municipalities than in those of Europe, not because the number of citizens able to pay is less, but because our tax system falls so much further short of reaching all citizens. It is stated that in Boston only 28,000 out of 73,000 voters pay taxes on property.[1] New York City had approximately 332,000 voters in 1890, but less than 15,000 names appeared on the rolls of personal property taxes,[2] while so few New Yorkers own real estate

[1] F. Morison, "Municipal Government; a Corporate, not a Political Problem," *Forum*, XIII, 788.

[2] Quarterly Report of Commissioners of Taxes and Assessments, New York *City Record*, 1889, p. 3233.

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that we cannot doubt that the total number of taxpayers in that city bears a much smaller ratio to the number of voters than in Boston. Under such circumstances, no European municipality would dream of limiting the suffrage to taxpayers. To do so would be to exclude an immense number of intelligent tradesmen and skilled workmen, and even many comparatively well-to-do professional men. Such figures as those just cited merely indicate the great desirability, not only of more thorough assessment of our present taxes, but of the introduction of new forms of taxation which shall reach immediately practically all adult males, save paupers. The payment of a direct tax to the city would undoubtedly increase the interest of the citizen in its welfare, even though at present he may in actual fact, by the process of shifting, be bearing his proper share of the public burdens. If such general taxes existed, there could be no harm in excluding from the polls those who failed to contribute. Indeed, were such a change in our methods of taxation adopted, it might become a politically feasible proposition to establish a tax-paying requirement for the suffrage. The number who would be shut out under such a franchise in American cities would probably be no larger than in European towns; for we have no reason to believe that poverty and instability of life are more prevalent here than there.

The ignorance of our city population, serious as it doubtless is, is not so much greater than that of the citizens of European towns as has often been imagined. If illiteracy be taken as the test, we shall find that in New York City the proportion of the population over ten years of age who are unable to read and write is 7.7 per cent; in Chicago, 4 per cent; in Brooklyn, 3.2 per cent; in Boston, 5.7 per cent; in San Francisco, 5.3 per cent.[1] In all England and Wales, on the other hand, 3.7 per cent of adult males are unable to write their own names; in France, 4.9 per cent; while in Germany the proportion is far less, only .11 per cent.[2] We must notice, moreover, that illiteracy in

[1] U. S. Census, 1890: Population, I, lvi, lviii.
[2] Statesman's Yearbook, 1899, pp. 33, 516, 582.

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American cities is almost wholly confined to persons of foreign birth, and doubtless — though this is not shown statistically — largely to those who have not become naturalized and hence are not voters. In most of our cities not one in a hundred persons over ten born of native parents is illiterate; in New York the proportion is one in two hundred. Those born in this country, but of foreign-born parents, show but a shade more illiteracy; while of the foreign-born, from six to fourteen per cent are unable to read and write. Proper educational tests for the suffrage, which fortunately are already being adopted in some states, coupled with a test of literacy in connection with naturalization, appear to be the natural and obvious remedies for the ignorance of our electorate, rather than any device of municipal organization. Such tests would, if properly enforced, eliminate much of the most ignorant, poor and corrupt element, even without the additional tax-paying requirement above suggested. No one can doubt for a moment that our own native-born municipal voters are on the average fully as well fitted for self-government as the citizens of any European city; for sound common sense, independence of thought and action, and interest in public affairs are admittedly marked characteristics of the masses of the American people.

In further refutation of the argument that the superiority of the city voters chiefly explains the good government of foreign municipalities, it should be pointed out that in England the requirements for the municipal suffrage have been practically unchanged since the adoption of the great Municipal Corporations Act of 1835. At that date poverty and ignorance were vastly more prevalent there than they are to-day in America; yet from the very beginning of the reform era then inaugurated the English boroughs were honestly and efficiently governed. As late as 1873 nearly one-fifth of the adult males of Great Britain were unable to write their names, while the proportion fell only to one in eight by 1883;[1] yet during the decade between these two years some of the most noteworthy achievements of municipal enterprise were being made.

[1] Statesman's Yearbook, 1899, p. 38.

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Undoubtedly the presence of an immense number of the foreign-born in our cities has tended to make the problem of good government a more difficult one than has confronted European municipalities. In nearly all of our great cities between two-fifths and three-fifths of all adult males are of foreign birth, while often fully half of the remainder are sons of foreign-born parents. To be sure, only 58 per cent of the foreign-born men in the country have become naturalized, and in almost none of our largest cities is the ballot given to them before naturalization. We are thus spared a certain number of unsafe voters — those most recently arrived, and hence most ignorant and most indifferent to public affairs. Nevertheless, as it is, we find that from one-third to one-half of all persons entitled to the municipal suffrage were born on foreign soil.[1] Though many of these naturalized citizens are intelligent and worthy, — a fact which we sometimes overlook, — great numbers of them are poor, ignorant and lacking in familiarity with and devotion to our institutions and principles of government. Their ballots are too often cast under the influence of corruption, clannish prejudice or the personal control of clever and unscrupulous ward politicians.

We must not, indeed, imagine that European towns escape entirely from corresponding difficulties. The immense influx to the cities has brought to them, if not many of foreign birth, great masses of the most poor and ignorant of the rural classes — people unfamiliar with city life, unaccustomed to independent political action, wanting in devotion to their adopted city. It must be granted, however, that the problem of our cities is the more serious. But ought we not to seek for a more direct solution than that of centralizing power in the mayor? Already we are beginning to restrict the immigration of undesirable persons; and for political, as well as economic, reasons this movement may well go farther. Existing naturalization laws should be more strictly enforced. The period of residence

[1] U. S. Census, 1890: Population, II, lxvi, 282. The proportion in New York is 47 per cent; in Chicago, San Francisco and Cleveland, about 45 per cent; even in Boston 30 per cent.

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required before citizenship might perhaps well be lengthened. There is nothing, moreover, to prevent the states from requiring as a qualification for suffrage longer residence or the fulfillment of severer conditions on the part of foreigners than are demanded for naturalization. We have already pointed out that a proper educational test for the franchise would exclude chiefly the foreign-born, and beyond doubt the most dangerous of them.

3. Finally, it is urged by those who criticise the council system that European and American cities differ greatly as regards the political spirit of their citizens, the difference showing itself especially in the relation of parties to municipal government. In Europe there is, we are told, both in national and local politics, a ruling class of high intelligence and education and long political experience. It is composed largely of the more aristocratic, wealthy and leisured citizens. These men are willing to give time and energy to the public service. The common people, more from traditional deference than from conscious intention, are willing to choose members of this class for their officers. Partly because of this relation of classes and partly for other reasons, political parties in Europe are to a great extent free from the evils which characterize our own. They seek no spoils; they refrain almost wholly from interference in purely municipal affairs. In America, on the other hand, all these conditions are reversed. There is no recognized governing class. The most intelligent are wholly engrossed in the rush of private money-getting. The masses have no deference for the best and ablest citizens, but follow rather corrupt bosses and demagogues. National parties, chiefly for the sake of patronage and illicit gains, enter the municipal field and completely banish proper municipal issues. It is these differences in political conditions, we are told, which chiefly explain the superiority of European municipal administration, which make possible abroad the selection of good and able councilmen and the success of a system which in this country is foredoomed to failure.

Unfortunately these statements, though often exaggerated,

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possess no little truth. The neglect of both national and municipal politics by the more educated and well-to-do citizens is beyond question a prime cause of our political ills. In Europe the existence of an upper class of long standing and the establishment, as the result of an older civilization and of the exhaustion of opportunities for rapid material gain, of other ideals of achievement than that of amassing wealth, have naturally prepared a body of citizens fitted and willing to take part in solving the great problems of modern government. The absence of these conditions in America, as well as other causes which it is not necessary to repeat, have brought it about that our own upper classes fall far short of properly fulfilling their political duties. The remedy for this unfortunate state of affairs is clear, though it may not be easy: it is direct, not indirect. We can hope for better politics only in proportion as our citizens, of all classes, rise in political intelligence and morality. Our ablest and best educated men must learn to take a proper interest in public affairs and to devote proper effort to their management. The great body of the citizens must learn, not from blind deference, but from deliberate purpose, to secure the highest ability for government, to vote for the wisest and most upright of the community, and to trust them to advise as to general policies and to work out details of government; while the masses of people themselves must become better fitted than they are to-day to decide broad political issues. But this change in the political spirit of our people can come only by gradual growth. The results which it will bring can be accomplished by no legerdemain. Our citizens cannot be tricked, by any device of organization such as centralizing power in the mayor, into securing better government than they deserve; although undoubtedly a bad form of organization may hinder them from getting as good as they deserve. Fortunately, everything points to the belief that, as our country is growing older, as life is becoming more stable, this fundamental improvement in the character of our citizenship is steadily going on. To hasten its march is the foremost duty of the municipal, as of every other political, reformer.

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The corrupt interference of national political parties in our municipal governments, which has with justice been so severely censured, is not an independent political phenomenon. It is not due to historical accidents from which a more kindly fate has spared the cities across the sea. It is but one phase of the evil condition of our party life. That evil condition is partly due to other causes, but most of all to that low standard of political thought and morality among our citizens of which we have just been speaking. In proportion as our municipal voters rise in this regard will they recognize the absurdity and wickedness of allowing national party issues and organizations to determine, not alone who shall stand at the head of our city administrations, but even who shall perform their simplest and most non-political services, and to fashion the entire policy and administration of our cities. The exclusion of parties from municipal politics is in no way furthered by centralizing power in the mayor: on the contrary, as the late Dorman B. Eaton so clearly pointed out, if any change in organization can aid toward that end, it is the concentration of authority in the council.[1] Under the one-man system an occasional wave of reform may bring a non-partisan into the mayor's chair; but the immense power and patronage of that position will make it a most tempting prize for the great parties and will tend continually to inflame party spirit in the city elections. Once a partisan mayor is placed in office, he will, as has been so often seen in New York, Brooklyn and other cities, use all his great authority for the advantage of himself and his party at the next election, and will thus tend to draw party lines still more sharply. On the other hand, a city council may be so constituted as by its mere organization to hinder partisanship. If only a part, say one-third, of its members should be chosen at any one election; if the single-district system of representation should give way to election on general ticket from the entire city or from a few large districts; especially if proportional representation should be intro-

[1] Eaton, The Government of Municipalities, chaps. x and xiii. The writer is indebted to Mr. Eaton's book for many valuable suggestions.

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duced, the national parties would probably soon find themselves unable to gain much even by repeated victories at the polls, and would gradually withdraw from municipal politics. It is noteworthy that prior to the English municipal reform of 1835 national parties interfered most extensively and corruptly in borough affairs; but that, after the establishment of an all-powerful council with provision for only partial renewal of its membership at each election, party influence largely ceased in the choice of councilmen and wholly disappeared from the municipal civil service. It is probable that the absence of corrupt partisanship in European cities, instead of being the cause of the success of the council system, is largely the result of that system itself.

The considerations in the preceding paragraphs seem to show that more fortunate conditions alone can scarcely account for the superiority in the results of European municipal government, under the council system, as compared with any which we have achieved in America. So far as our conditions are more unfavorable, — as regards the suffrage, the intelligence and homogeneousness of the electorate, the political spirit of the people and the attitude of the parties, — the remedy lies in the direct and obvious means that have been suggested, rather than in the centralization of power in the hands of the mayor. In a later paper, moreover, the attempt may be made to prove that the policy of intrusting the chief power in the municipality to a single individual is inexpedient, on principles which, if correct, apply apparently with almost equal force, whatever may be the character of the electorate or the conditions under which the administration works.

E. DANA DURAND.

STANFORD UNIVERSITY.

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THE ORIGIN, PURPOSE AND EFFECT OF THE DIRECT-TAX CLAUSE OF THE FEDERAL CONSTITUTION. II.

V.

THIS study of the procedure of the federal convention has shown that there was manifested no general desire to limit the taxing powers of the new government. Patterson's plan, which would have restricted Congress to impost and stamp duties, received the support of only two states; while Randolph's propositions were reported to the convention by a vote of seven states to three, Maryland's delegates being equally divided.[1] But in a few directions limitations were finally imposed. When the power of regulating commerce was granted, the convention provided that duties, imposts and excises should be uniform throughout the United States. Then the institution of slavery required and secured protection in three provisions — namely, the limitation of the duties that could be imposed upon the importation of negroes, the prohibition of taxes on exports and the specific provision concerning capitation taxes. Finally, out of the controversy over representation for the slaves in the apportionment of members of the House of Representatives, there came the requirement that direct taxes and representatives should be apportioned according to the rule of numbers. Thus it seems that the constitutional requirement concerning direct taxes originated in the struggle to effect a compromise on the question of representation for the slaves. It had no basis in any rational scheme for regulating taxation, and could have had none. There is no reason for thinking that such a plan would have occurred to any one, had the convention not been at its wit's end for some method of effecting an adjustment of the question of representation. Historically, the provision must

[1] Elliot, I, 180; V, 211, 212.

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be viewed as a relic of the great compromise upon the subject of slavery.

But different views have been advanced. Mr. George Ticknor Curtis argued, in 1866, that the direct-tax clause was an intentional limitation of the power of Congress. He held that, after the states gave up to the general government the exclusive right of levying customs duties, they refused to concede full powers of direct taxation concurrent with their own.[1] In the income-tax cases, in 1895, Chief Justice Fuller gave a somewhat similar explanation. "The men who formed and adopted that instrument," he said, "had just emerged from the struggle for independence, whose rallying cry had been that 'taxation and representation go together.'" This principle was incorporated in the constitution, so that whenever Congress should vote a tax, "it would fall proportionately upon the immediate constituents of those who imposed it." More than this, the states surrendered their power to tax imports. Therefore, in giving Congress "power to tax persons and property directly," they did so "in reliance on the protection afforded by restrictions on the grant of power." "If, in the changes of wealth and population in particular states, apportionment produced inequality, it was an inequality stipulated for, just as the equal representation of the states, however small, in the Senate, was stipulated for."[2]

Again, Mr. Justice Field, in his tirade against the legislators who passed the income-tax law, found time for a few remarks concerning the origin of this constitutional provision. He said that the convention was greatly embarrassed, first, by the disinclination of the importing states to give up their right to levy

[1] *Harper's Magazine*, XXXIII, 359. Mr. Curtis also advanced a second reason. He said that the people "had never been accustomed to have a direct tax imposed without apportionment among the local subdivisions of the state." Nothing could be further from the truth. In all states south of Delaware, "taxes were laid directly on persons or the property of individuals by the state." (R. T. Ely, Taxation in American States and Cities, 123. See Wolcott's report on direct taxes, State Papers, Finance, I.) In the states north of Delaware, taxes were apportioned among counties and towns, but according to assessed valuations, not according to the absurd and inequitable rule of numbers.

[2] 157 U. S. Reports, 556, 557; 158 U. S. Reports, 620, 621.

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import duties and, second, by the fear on the part of the small states that the larger states might impose unequal burdens upon them, if the power to tax directly real and personal property should be surrendered to Congress. This embarrassment, he declared, was so great as to threaten the dissolution of the convention, and the direct-tax clause was finally formulated as a compromise on this important point.[1] Justice Field confined himself to generalities, and did not refer in detail to the proceedings of the convention. This was fortunate for the argument; for an examination of the debates shows that no member of the convention was inclined to question the propriety or expediency of giving Congress power to levy import duties; that the fears of the small states concerned the general influence of the large states in matters of legislation, not in taxation, as a principal source of danger; and that the direct-tax clause was introduced in the middle of a heated controversy over representation for slaves, and without any reference to questions of taxation. There is not one word in the proceedings of the convention to justify the claim that difficulties on the subject of taxation threatened to bring its efforts to naught.

Views similar to those of Justices Fuller and Field were advanced by the counsel in the income-tax cases. It was urged that the older and richer states had been jealous of the growing power of the West, and had inserted this clause in order to prevent a combination of Western states from imposing heavy burdens on the richer communities of the Atlantic coast; and even that this provision was "designed for the protection or advantage of some set of persons or some particular interest or interests," and that the rule "was manifestly designed for the protection and advantage of property holders, as a class."

[1] 157 U. S. Reports, 587. There is no doubt that Justice Field formed this opinion as a result of a correspondence with the late David A. Wells. The writer is informed by a friend, who holds the chair of political economy in a well-known university, that he saw one letter which Wells wrote to Field, and that this letter was incorporated almost literally in Field's opinion. In the *Popular Science Monthly* (LIII, 385, 386), Mr. Wells discusses the purpose of the direct-tax clause in language which is almost the same, word for word, as that used by Justice Field.

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All these views may be fairly summarized in two theories of the origin and purpose of the direct-tax clause. The first is that it was a check upon the powers of Congress in direct taxation, devised for the purpose of compensating the states for conceding to the general government the right to levy customs duties. The second is that it was intended to prevent oppressive taxation of any one section of the country by a combination of representatives from other sections.[1]

In the proceedings of the convention there seems to be nothing to support either of these theories. The direct-tax clause was proposed at a time when the members were interested solely in the question of representation for the slaves. It was manifestly intended as an expedient for cooling the ardor of the South in insisting upon such representation or for reconciling the North to a concession of at least a part of what was demanded. For data with which to settle this question we are not dependent solely upon the votes and debates of the convention. We have the express testimony of the very man who proposed to proportion direct taxation to representation, and this is confirmed by the explicit statement of James Madison. On the twenty-fourth of July, just before the resolutions of the convention were referred to the committee of detail, Gouverneur Morris expressed the hope that

the committee would strike out the whole of the clause proportioning direct taxation to representation. He had only meant it as a bridge to assist us over a certain gulf: having passed the gulf, the bridge may be removed. He thought the principle laid down with so much strictness liable to strong objections.

[1] In this connection, allusion has been made to the jealousy of the growing power of the West; and it has been intimated that the direct-tax clause was intended to protect the property of the Eastern states from combinations of Western representatives. Nothing could be more incorrect. It has already been shown in this article that jealousy of the West was confined to a few members of the convention, who were promptly outvoted when they made a definite proposal to restrict the representation of new states. Moreover, the fears expressed with regard to the future power of the West concerned general matters of legislation, taxation never being mentioned in this connection. No one dreamed of crippling the government's powers of taxation in order to restrict the future power of the West.

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This was sufficiently explicit, but Madison, in his report of the debates, added an explanatory note at this point.[1] He wrote:

> The object was to lessen the eagerness on one side for, and the opposition on the other to, the share of representation claimed by the Southern States on account of the negroes.

The obvious interpretation suggested by the proceedings of the convention is, therefore, corroborated by the testimony of the men who were in the best position to know the exact reason for the introduction of the direct-tax clause. The most careful reading of the journal of the convention and of Madison's report of the debates fails to show anything that contradicts this explanation or lends support to any other. We have but one other account of the proceedings of the convention at the time when the direct-tax proposition was brought forward. This is contained in the papers of Rufus King.[2] It is not satisfactory in many respects, but it deserves mention at this point. King gives an account of the famous controversy over representation for the slaves, and says:

> The Representation was twice recommitted altho' not to the same Committee; finally it was agreed yt Taxation of the direct sort & Representation shd. be in direct proportion with each other. . . .

This makes it clear that, in the mind of King, the provision concerning direct taxation was connected with the compromise over the representation for the slaves.

The proceedings of the convention, therefore, as interpreted by Morris, Madison and King, should leave no room for doubt concerning the origin and purpose of the direct-tax clause. If, however, the subsequent discussions concerning the constitu-

[1] Elliot, V, 363; Gilpin, 1197. This note was clearly in the original minutes taken by Madison. The writer examined the original manuscript to determine this point, and found that the color of the ink, the writing and the position of the note leave no doubt that it was a part of the original minutes. See Madison Papers, III, 75, in State Department Library.

[2] The Life and Correspondence of Rufus King, I, 615 (New York, 1894). The minutes kept by Robert Yates cover only the period from May twenty-fifth to July fifth. (Elliot, I, 389–479.) The notes taken by William Pierce cover only a small portion of the debates in June. — *American Historical Review*, III, 317–324.

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tion are examined, the case is not, at first sight, so perfectly clear. Statements were made concerning the probable effects, if not the original purpose, of the clause, which seem to lend support to other views. Some of these facts are perhaps the basis for the theories advanced by Mr. Curtis and by Justices Fuller and Field.

We may consider first the theory that the states were unwilling to give the general government the right to levy customs duties, without having the powers of Congress narrowly restricted in matters of direct taxation. This theory seems to be entirely unsupported by any explicit statements of the men who framed and adopted the constitution. It is based upon inferences from certain well-established facts, and its truth or falsity depends upon the correctness with which the inferences have been drawn.

In its support it is pointed out that, when the constitution was before the people, much criticism was directed against the power of direct taxation ;[1] that fears were expressed lest the new government would seize upon all sources of revenue, leaving the states with no means of support ;[2] and that the friends of the constitution often declared that direct taxes would probably be a last resort of Congress, and would be used only in case of some great emergency.[3] But, on the other hand, it may be answered conclusively that the leaders in the fight for a national government unfalteringly insisted that the United States ought to possess complete powers of taxation, and that they carried the day against the timid conservatives and the paper-money repudiators who desired to deprive the new government of all adequate means of support. He who reads the ringing words of Hamilton, Jay, Ellsworth, McKean, Randolph,

[1] Elliot, I, 369 ; II, 71, 160, 332, 333, 374; III, 29, 56, 57, 166, 167, 214, 280, 320; IV, 75; Ford, Essays on the Constitution, 53; Ford, Pamphlets on the Constitution (Brooklyn, 1888), 102, 304.

[2] For example, see a report of a committee of the Massachusetts legislature in 1790. Published in *American Historical Review*, II, 104.

[3] Elliot, II, 42, 57, 60, 61, 64, 76, 106, 132, 191, 192, 211, 243, 333, 343, 501 ; III, 40, 95, 109, 300; IV, 77, 78, 189, 190, 220, 260 ; V, 373, 417, 433, 455; Ford, Pamphlets, 160, 253; Ford, Essays, 239, 404; Lodge, Works of Hamilton (New York, 1885–1886), IX, 69, 123, 125, 183.

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Wilson and a host of others cannot doubt that the constitution was intended to confer upon Congress complete powers of taxation.[1] Ellsworth, for instance, argued:

> It is necessary that the power of the general legislature should extend to all the objects of taxation, that government should be able to command all the resources of the country; because no man can tell what our exigencies may be. . . . A government which can command but half its resources is like a man with but one arm to defend himself.

More than this, the opponents of the constitution explicitly stated that its adoption would confer upon Congress the most complete powers of taxation. These men never doubted the intention of the new instrument on this point.[2] William Patterson, the man who proposed in the federal convention the plan of government that sought to limit Congress to impost and stamp duties,[3] has left us a judicial opinion upon this very subject. In 1796 he declared: "It was, however, obviously the intention of the framers of the constitution, that Congress should possess full power over every species of taxable property, except exports." And in this opinion all of Patterson's associates upon the supreme bench concurred.[4] Upon other questions the framers of the constitution were sometimes obliged to resort to compromises, but in the matter of taxation this was not the case. The men who were willing to have Congress incur debts, but unwilling to provide adequate means for their honest payment, were squarely met and totally defeated. Except in the case of exports, it is clear that the constitution was intended to give to the general government full power to command the resources of the country in its exercise of the right of taxation.

But it has been argued that a number of states proposed amendments by which it was to be provided that Congress should not levy direct taxes until it should first make requisitions upon the states for the quotas of money due according to

[1] See especially Elliot, II, 190, 191, 367, 380, 466, 535; III, 127.

[2] Elliot, II, 71, 330–332, 378; III, 29, 57, 263; IV, 75; Ford, Pamphlets, 102, 304; Ford, Essays, 53.

[3] Elliot, I, 175; V, 191.

[4] 3 Dallas, 173, 176, 181.

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the rule of apportionment, and should fail to secure a compliance with its demands.[1] Furthermore, it may be said that friends of the constitution recognized the strength of the opposition to direct taxation, when they intimated that the states would probably be given an opportunity to collect, in the manner most convenient, their quotas of direct taxes, before Congress would proceed to exercise the right of taxing citizens directly.[2] But these facts do not prove the theory that the states insisted upon the direct-tax provision, as a necessary protection for their own revenue powers after import duties were conceded to the national legislature. These proposals do indicate an opposition to direct taxation by the federal government, and part of this opposition did certainly come from jealousy concerning the safety of state revenues. But these proposals were opposed in the state conventions by the leading friends of the new plan of government;[3] the constitution was actually adopted without the suggested alterations; and when an amendment to secure them was introduced in the first House of Representatives, it was rejected by a vote of 39 to 9.[4] It is submitted that the failure of the attempt to oblige Congress to resort to requisitions does not support the theory that the direct-tax clause was intended as a safeguard of the revenues of the states.

According to the second theory, the rule for apportioning taxes was intended to prevent oppressive taxation of any state or section by a combination of other states or sections. Various passages from the speeches of such men as Madison, Randolph, Hamilton, Nicholas, Pendleton and Williamson may be cited in support of such a view. We may begin with extracts from the *Federalist*. Hamilton, after discussing the difficulties of securing accurate assessments for the apportionment of direct taxes, wrote:

[1] Elliot, I, 322, 323, 325, 326, 329, 335; III, 31; V, 453.

[2] Elliot, I, 492; V, 316; Pierce, Debates in the Convention in Massachusetts, 304, 311; Ford, Essays, 235, 236; Ford, Pamphlets, 49.

[3] Elliot, II, 59, 60, 342, 343, 367, 368, 380, 381, 536; III, 40, 41, 100, 101, 118, 119, 122, 181, 228, 229, 245, 250–252, 328, 329; IV, 77, 78, 82, 85, 92.

[4] Annals of Congress, First Congress, 807.

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In a branch of taxation where no limits to the discretion of the government are to be found in the nature of things, the establishment of a fixed rule, not incompatible with the end, may be attended with fewer inconveniences than to leave the discretion altogether at large.[1]

This was intended as a defense of the rule of apportionment according to numbers. It will be noted that Hamilton considered that rule not incompatible with the end of giving the government complete powers of taxation. He did not consider the adequacy of direct taxation for purposes of revenue to be limited by the constitutional requirement, but simply thought that abuse of the power might be prevented by the apportionment rule. Elsewhere he wrote that this provision "effectually shuts the door to partiality or oppression."[2] Similar ideas were advanced in the Virginia convention, where Patrick Henry, George Mason and others attacked vigorously the proposal to give Congress the right to levy direct taxes. In reply to such objections, Madison said:

Our state is secured on this foundation. Its proportion will be commensurate to its population. This is a constitutional scale, which is an insuperable bar against disproportion, and ought to satisfy all reasonable minds.

Randolph and George Nicholas also urged strongly that the provision fixed the amount which could be drawn from Virginia by direct taxation.[3]

These statements, if they stood by themselves, would seem to support strongly the theory under discussion. But they need to be considered carefully, with reference to the circumstances under which they were made. Hamilton, Madison, Randolph and Nicholas were in the midst of a controversy, and were defending the power of direct taxation from the criticisms that were raised against it. It will be noticed that none of these statements are *express explanations of the purpose of the clause relating to apportionment*. They may be considered

[1] Lodge, Works of Hamilton, IX, 125.
[2] *Ibid.*, IX, 210. [3] Elliot, III, 307; *cf.* 121, 244.

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merely as declarations concerning its incidental effects upon the position of the states in the matter of direct taxation. In the case of Madison, it will be remembered, we have his express statement, made in his minutes of the debates of the convention, that Morris offered his proposals concerning the apportioning of taxes in order to hasten a settlement of a dispute over representation for the slaves. Special pleading in the course of a heated controversy cannot stand against the deliberate records which are found in the proceedings of the convention.

Upon later occasions we find two express statements that the object of the direct-tax clause was to safeguard a state or section against oppressive taxation. Hugh Williamson said in Congress, in 1792, that this clause was intended to prevent the imposition of unequal burdens.[1] Four years later Edmund Pendleton advanced a similar argument.[2] Such evidence is of importance, especially when added to that furnished by the words of the statesmen previously quoted. But it needs to be weighed against the express statements of Morris, Madison and King, made in the accounts of the debates of the federal convention, and against all the other materials that can be drawn from the discussions of the period when the constitution was being ratified. It will be shown in subsequent paragraphs that the explanation which Morris, Madison and King made concerning the purpose of the direct-tax clause is confirmed by evidence drawn from later sources.

Besides the two theories already presented, there was suggested a third explanation of the purpose of the apportionment clause. In support of this third theory, James Madison may be quoted. In the Virginia convention he urged that, "from the modes of representation and taxation, Congress cannot lay such a tax on slaves as will amount to manumission."[3] In North Carolina it was argued by Spaight, who had been a member of the federal convention, that the apportionment rule was "meant for the salvation and benefit of the Southern

[1] Elliot, IV, 427.

[2] In Bache's *Aurora General Advertiser* for February 11, 1796.

[3] Elliot, III, 453.

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States."[1] Without this provision the South might be oppressed, since "an acre of land in the Northern States is worth many acres in the Southern States." In the Hylton case, in 1796, Judge Patterson advanced the same explanation.[2] He held that the constitutional rule was made in the interest of the South. This section had many slaves and large tracts of land thinly settled. The other states had few slaves, and their territory was limited and well settled. Without this constitutional requirement, Congress might have taxed slaves arbitrarily, and might have taxed land in all parts of the country at a uniform rate. This would have been highly oppressive to the South.

Madison's words are not an express statement of the purpose of the constitution, and may be merely an opinion concerning its incidental effects. But Spaight and Patterson clearly advanced explanations of the object of the direct-tax clause. Two things may be said concerning the theory here presented. First, it ought not to stand against the evidence found in the debates of the federal convention, supported, as we shall find it to be, by later testimony. Second, it seems certain that Patterson and Spaight were misled by what they undoubtedly remembered concerning the provision that no "capitation or other direct-tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken." We have seen that so much of this clause as refers to a capitation tax was introduced for the sole purpose of protecting slave owners from an arbitrary tax upon the blacks. Knowledge of this fact might easily lead to the conclusion that the original apportionment rule was likewise intended for the benefit of the South.

Having considered all the evidence in favor of these three divergent theories, we may now inquire what facts can be drawn from subsequent discussions to support the theory which seems to be the only one justified by the proceedings of the federal convention, as explained by Morris, Madison and King. In the New York convention Hamilton referred to the direct-

[1] Elliot, IV, 209, 210. [2] 3 Dallas, 177.

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tax clause in a manner that corroborates the view that this provision was intended to reconcile both the North and the South to representation for three-fifths of the slaves. Hamilton was called upon to meet the contention that it was unfair to allow the South any representation whatever for men who were held as property, with no political rights and no "will of their own." He argued:

> But representation and taxation go together, and one uniform rule ought to apply to both. Would it be just to compute these slaves in the assessment of taxes, and discard them from the estimate in the apportionment of representatives?[1]

In the same state, George Clinton objected to the rule for apportioning direct taxes according to numbers. He held that property should be the basis for the assessment of public burdens, and said: "You are told to look for the reason for these things in accommodation."[2] Hamilton's argument and Clinton's objection alike make it clear that in New York the requirement of direct taxation for three-fifths of the slaves was used, as Morris had intended, for the purpose of reconciling the people of the North to the concession of a three-fifths representation.

In the Massachusetts convention, when the provision for apportioning direct taxes was under discussion, the record states[3] that "Messrs. King, Gore, Parsons, and Jones, of Boston, spoke of the advantage to the Northern States the rule of apportionment in the third paragraph (still under debate) gave to them." Unfortunately these speeches are not reported; but the drift of the argument is, nevertheless, sufficiently plain. Better still is the reply which James Warren made to the plea that the taxation for the three-fifths of the slaves compensated the North for the concession of a three-fifths representation. Warren asked whether Massachusetts ought to give up her right of equal representation for her white inhabitants "to any State that would pay our whole proportion of direct and

[1] Elliot, II, 237. [2] Ford, Essays, 273.
[3] Elliot, II, 42.

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indirect taxes."[1] He declared that no financial consideration could compensate for a concession of unequal representation. Moreover, he thought that the burdens avoided by Massachusetts would be merely nominal, because the South, enjoying slave representation, could prevent the imposition of direct taxes and confine the federal government to indirect taxation. Here again both the argument and the reply show that the direct-tax clause was actually used in precisely the manner contemplated by Morris and explained by Madison.

We find, therefore, four conflicting views of the purpose of the constitutional provision for apportioning direct taxes. The proceedings of the constitutional convention, interpreted fairly and explained by Morris, Madison and King, give countenance to only one theory — that the apportionment rule was merely a bait for extremists in the North and in the South, thrown out in order to secure the adoption of the compromise over representation for the slaves. This consideration should be of decisive weight. Three other theories find more or less support in the discussions of the period that witnessed the adoption of the constitution. But the theory based upon the proceedings of the federal convention finds important corroborating testimony. Can there be any doubt as to which explanation has the weight of evidence on its side?

This particular question has not attracted much notice from the writers upon American constitutional law and history. But it will be well to consider the views of the few authorities who have in any way referred to the subject. Joseph Story has treated at length the great controversy over the concession of representation for three-fifths of the slaves. After explaining the real nature of the compromise between the free and the slave states[2] upon this point, he shows that, in order to reconcile the non-slaveholding states to this provision concerning representation, another clause was inserted, requiring that direct taxes should be apportioned in the same manner as represent-

[1] Letters of a Republican Federalist, quoted by S. B. Harding, The Contest over the Ratification of the Federal Constitution in Massachusetts (New York, 1896), 157, 158.

[2] Commentaries, § 642.

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atives. Thus the weight of his authority can be invoked in support of the theory clearly indicated by the proceedings and debates of the federal convention. James Kent treated of this subject very briefly.[1] He considered the objections that could be advanced against allowing representation for the slaves and the reasons for such a concession. Then he pointed out that these same slaves served to increase the burdens of direct taxation — a fact which he regarded in the light of a compensation to the non-slaveholding states. W. A. Duer noted that the apportionment of direct taxes upon the same basis as representatives increased the burdens of direct taxation to be borne by the South.[2] Mr. Justice Swayne, in a decision delivered in 1880,[3] called attention to the origin of the direct-tax clause in the compromise over representation for slaves. Mr. George Ticknor Curtis, who advanced in 1866 a different theory of the purpose of the apportionment rule, presented in his *Constitutional History*[4] an account of the genesis of this provision that is identical with that offered in the present essay. Finally, George Bancroft has given us a history of the proceedings of the convention, in which he explains most clearly that the provision concerning direct taxes originated in the attempt of Gouverneur Morris to effect a compromise of the dispute over representation for the slaves.[5] With the exception of George Ticknor Curtis, in his article of 1866, it is believed that no writer can be quoted in support of the views advanced by Justices Fuller and Field in 1895. It thus appears that the weight of authority has always been on the side of that theory which alone finds justification in the records of the constitutional convention.

VI.

It remains for us to consider the character and the effect of this constitutional rule, which had its origin, as has been shown,

[1] Commentaries on American Law (fourteenth edition, Boston, 1896), I, 231.

[2] Constitutional Jurisprudence of the United States (second edition, Boston, 1856), p. 56.

[3] 102 U. S. Reports, 596.

[4] Constitutional History, I, 408–414.

[5] History of the United States, VI, 265, 266.

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in an attempt to compromise differences of opinion concerning the justice of allowing representation for the slaves.

This clause of the constitution requires that direct taxes shall be divided among the states according to their respective numbers, and provides for what Bancroft would have called a "collective poll tax."[1] Such a rule of apportioning public burdens is repugnant to every principle of just taxation. It is open to the further objection that direct taxes assessed upon this basis must prove almost valueless as a source of revenue. When public burdens are apportioned in such a manner that the weakest communities must bear as great a burden as the strongest, the fruitfulness of any tax is measured by the ability of the weakest state to contribute to the support of the general government.[2] Both the injustice and the unproductiveness of such imposts ought to be so clear as to require no further discussion. But in the income-tax cases it was argued by counsel, and explicitly stated by the court, that there is no real difficulty in apportioning taxes, even upon income, according to the rule prescribed by the constitution. The Chief Justice gravely raised the question:

> Cannot Congress, if the necessity exists of raising thirty, forty, or any other number of million dollars for the support of the government, in addition to the revenue from duties, imposts, and excises, apportion the quota of each State upon the basis of the census?[3]

Elsewhere, he seemed to admit the possibility of inequalities arising from the operation of the apportionment requirement; but he claimed, nevertheless, that the clause conferred upon Congress "a power just as efficacious" as any form of taxation "to serve the needs of the general government."[4] These

[1] History of the United States (fifth edition, Boston, 1863), VIII, 58.

[2] This was well stated by George Nicholas in the Virginia convention: "If we be wealthier, in proportion, than other states, it will fall lighter upon us than upon poorer states. They must fix the taxes so that the poorest states can pay; and Virginia, being richer, will bear it easier." (Elliot, III, 243.) Nicholas urged this fact as an argument in favor of the constitution. Such a consideration would have made no friends for the constitution in the poorer states.

[3] 158 U. S. Reports, 632, 633.

[4] *Ibid.*, 621.

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statements may perhaps warrant a historical and statistical investigation of the justice and efficacy of taxes apportioned according to the constitutional rule.

1. *Opinions of the framers of the constitution.* — It must be said that most of these men had no idea that the direct-tax clause would seriously impair the power of the government to draw forth the resources of the country. Such men as Hamilton, who desired Congress to possess all necessary authority, considered the provision "not incompatible with the end" of conferring upon the United States a general revenue power.[1] The clause was not accepted in the constitutional convention, until it had been amended so as to appear incapable of causing injury to the financial powers of Congress.[2] Sufficient other evidence has already been offered to support the conclusion that all, or nearly all, of the friends of the constitution held the same views as Hamilton. But one important consideration should not be overlooked. It is probable that the inequalities in the comparative wealth of the different states were not so marked in 1787 as they are to-day. At that time, the ability of the weakest state to contribute may not have fallen so far short of the ability of the richest as to make an apportioned tax so ineffective for revenue purposes as it would be at the present time.

Concerning the justice of the apportionment rule, opinions were divided. It will be well to consider first the arguments advanced in favor of numbers as a basis for apportioning direct taxes. Perhaps a majority of those who defended the provision did so because they believed it impossible to secure an equal and uniform assessment of property in all the states and preferred numbers as a "more practicable" rule, possessing greater "simplicity and certainty."[3] Thus, in the *Federalist*,[4] it is stated that numbers are not "a precise measure" of wealth and ordinarily are "a very unfit one"; but the consti-

[1] Lodge, Works of Hamilton, IX, 125.
[2] Elliot, Debates, V, 302.
[3] See Works of Hamilton, IX, 125; Elliot, I, 70, 71; II, 42; V, 295.
[4] Works of Hamilton, IX, 339.

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tutional provision is called the "least objectionable among the practicable rules." Other leaders seemed to endorse more fully the principle of the apportionment clause.[1] But when reasons were advanced for such an opinion, nothing better was offered than a statement that "population, industry, arts, and the value of labor, would constantly tend to equalize themselves," or some other equally vague explanation.[2]

On the other hand, many statesmen believed that the requirement was unjust. Opponents of the constitution naturally did not neglect such an opportunity as this clause offered, and insisted, with George Clinton, that property should be the basis of taxation.[3] But King and Morris also expressed their hostility to selecting numbers as a measure of wealth.[4] Moreover, Wilson and Hamilton can be quoted in opposition to the proposition that numbers are a fair rule for taxation.[5] Hugh Williamson asserted: "It is impossible to tax according to numbers. Can a man over the mountain, where produce is a drug, pay equal with one near the shore?"[6] Gouverneur Morris, as we have seen, declared, before the convention closed, that the provision was "liable to strong objections." In 1789 he wrote that the difficulties caused by the direct-tax clause would probably "force Congress into requisitions."[7] In 1796 Justice Patterson declared that "numbers do not afford a just estimate or rule of wealth," and that the apportionment clause was "radically wrong."[8] In 1797 it was argued in Congress that a direct tax would be inexpedient, because its distribution among the states would, of necessity, be extremely unequal and unjust.[9] In 1807, and again in 1812, Gallatin urged the same considerations.[10]

[1] Elliot, I, 72; IV, 210; V, 281, 299, 303, 309; Pelatiah Webster, Political Essays (Philadelphia, 1791), 55; Ford, Essays, 193.

[2] Elliot, V, 299. *Cf.* Works of Hamilton, IX, 125.

[3] Ford, Essays, 272, 273.

[4] Elliot, V, 297, 304.

[5] Elliot, I, 77; V, 25; Works of Hamilton, IX, 122–124.

[6] Elliot, I, 459.

[7] Sparks, Life of Morris (Boston, 1832), III, 471.

[8] 3 Dallas, 178.

[9] Annals of Congress, 4th Congress, II, 1866, 1906, 2196.

[10] State Papers, Finance, II, 249; Writings of Gallatin (Philadelphia, 1879), II, 506.

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In proof of the assertion that the constitutional rule of apportionment was considered entirely just and satisfactory, it is pointed out that eleven or twelve states had voted to amend the Articles of Confederation in such a way as to permit the quotas of the requisitions to be determined by a similar rule. But this was not done until all attempts to assess the requisitions upon the basis of the value of real property had failed. So far as the old Confederation was concerned, there can be no doubt of the absolute impracticability of any other rule of apportionment than that of numbers. But when a new government was formed and endowed with a general power of taxation, there was no longer any necessity for apportioning requisitions among the states, and there was no justice in selecting numbers as the basis of direct taxation. The direct-tax clause was accepted by most of the friends of the constitution with the best grace possible, and was defended as well as its manifest injustice allowed. But it prescribed a rule of taxation that would have secured the assent of few, if any, of the framers of the constitution, under circumstances of less dire necessity.

Many of the expressions that can be quoted in favor of the apportionment rule are labored arguments in support of a compromise measure that could be neither rejected nor defended. In justification it was often said that "taxation ought to be in proportion to representation," or that "taxation and representation ought to go together." These phrases were on the surface akin to the watchword of the Revolution, "no taxation without representation"; but in essence they were, of course, totally dissimilar. That taxpayers should have a voice, through their representatives, in the imposition of taxes, is one principle: that every man should be taxed in proportion to the representation that he enjoys, is a very different proposition. The last principle would lead to a uniform poll tax as the sole source of public revenue, whenever citizens have an equal voice in the choice of representatives. Such a rule of taxation would have been universally repudiated in state affairs, where the poll tax had either been abandoned or had been supplemented by taxes upon property. In all quarters the very suggestion of a

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poll tax aroused bitter opposition,[1] and no one defended such an impost as a principal source of revenue, except in cases of direst emergency. The Maryland constitution of 1776 had condemned "levying taxes by the poll" as "grievous and oppressive."[2] Two states proposed to amend the federal constitution so as to prohibit Congress from ever levying a poll tax.[3] It is difficult to believe that the fathers would have chosen freely to limit the government's powers of direct taxation to what is practically a collective poll tax.

Finally, the constitution did not provide for equality of representation; for the whites of the South were given representation for three-fifths of their slaves. When the expression "taxation according to representation" is interpreted in the light of this fact, it may be taken to mean that the South should bear an additional share of direct taxation, to compensate for the increased representation that its white population was to enjoy. This brings us back to the true explanation of the purpose of the direct-tax clause. In view of the representation conceded for three-fifths of the slaves, it may have seemed a fair compromise that the South's quota of direct taxation should be proportioned to its share of representation.

2. *The experience of the federal government.* — Five years after the new government was established under the constitution, the necessary expenditures of the United States had increased to such an extent that it was perceived by the best financiers that indirect taxation ought to be supplemented by other revenues. A direct tax was proposed in 1794 and in 1796,[4] but Congress did not come to a decision until 1798. One of the reasons assigned for the reluctance to pass such a measure was the inequality and injustice of the constitutional requirement. The act of 1798 apportioned among the states a direct tax of $2,000,000.[5] This was assessed upon dwelling-

[1] Elliot, II, 43, 105, 106, 135, 340, 391, 502; III, 364; Ford, Essays, 272, 273; Works of Hamilton, IX, 213, 214.

[2] Poore, Federal and State Constitutions, I, 819.

[3] Elliot, I, 330, 336. [4] State Papers, Finance, I, 276, 409, 414–441.

[5] 1 Statutes at Large, 580, 597. See also C. F. Dunbar, in *Quarterly Journal of Economics*, III, 441, 442; Bolles, Financial History of the United States, II,

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houses, lands and slaves, and was collected by federal officers, without reference to state authorities. The tax was to be paid in 1800, but only $734,000 was raised in that year. In 1801 the collections amounted to $534,000, and in 1803 $207,000 was paid in.[1] Thus, less than three-quarters of the tax was raised in three years. Small payments dribbled into the treasury until 1813, when $238,000 still remained uncollected. The amount of the tax had been extremely small, when compared with the apparent needs of the government in 1798, but the difficulties of collection rendered it still more insignificant as a source of revenue. It will be seen that, if other imposts had been equally "efficacious to serve the needs of the general government," the United States would have been reduced to practical bankruptcy.

Congress did not attempt to levy another direct tax until the country became involved in the second war with Great Britain. Then the blockade of our ports caused the revenue from customs duties to fall off so heavily that internal taxes became absolutely necessary. So in 1813, Congress imposed, among other taxes, a direct levy of $3,000,000 upon the states.[2] This was assessed upon lands, houses and slaves, but the states were allowed to assume their quotas and collect the money for the United States by means of their own taxes. Seven states[3] availed themselves of this privilege, and in the other eleven the tax was collected by the federal government. This was a most favorable opportunity for proving the efficacy of direct taxes apportioned in the constitutional manner. The emergency was alarming, the necessities of the federal treasury were perfectly clear, and no one could deny the propriety of attempting to collect the small amount of money called for under the law. The result was a deficiency of nearly $800,000 out of the total

116–122 (New York, 1879–1886); Howe, Taxation in the United States, 30–34 (New York, 1896).

[1] These figures may be found in Scribner's Statistical Atlas, plate 81. (New York, 1883.) The amounts are stated in the nearest thousands of dollars.

[2] 3 Statutes at Large, 22, 53; *Quarterly Journal of Economics*, III, 442, 443; Bolles, II, 254, 259; Howe, 41–49.

[3] State Papers, Finance, II, 860, 861.

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levy of $3,000,000 for the year 1814. Congress felt obliged to establish, in 1815, an annual direct tax of $6,000,000. But this measure was repealed in 1816, when, however, a tax of $3,000,000 was required for that year.[1] These later acts differed in no essential feature from the law of 1813. The amounts required had been as follows: $3,000,000 by the act of 1813, $6,000,000 by the act of 1815 and $3,000,000 by the act of 1816. By the close of the fiscal year 1817, the payments had amounted to $10,470,000. Small collections continued until the year 1839, when the total receipts had risen to $10,984,000. The efficacy of this power of apportioned taxes can be judged from the fact that, during the years 1814, 1815, 1816 and 1817, when the returns were largest, direct taxes upon property had yielded only $10,470,000 out of a total of $100,486,000 which the government had drawn from the people by taxation.[2] Worse even than the failure of these direct taxes for purposes of revenue were the hardships caused by their unequal assessment.

Congress made no further attempts to use this efficacious power until the nation was convulsed in the throes of a life and death struggle with domestic insurrection. In the first war revenue act of 1861, there was a provision for an annual direct tax of $20,000,000.[3] This followed closely the lines laid down by the laws of 1813 and 1815. It was assessed upon lands and dwelling-houses, and the states were allowed to assume their quotas, if they should prefer to do so. The seceding states were included in the apportionment, so that the loyal states were asked for only $15,000,000. This was a very small amount, when compared with the resources of the country and the needs of the federal government. All the loyal states but two assumed their quotas. The payments made, however, consisted largely of the settlement of accounts which the states

[1] 3 Statutes at Large, 164, 255; *Quarterly Journal of Economics*, III, 444.

[2] These figures may be found in Scribner's Statistical Atlas. The results are stated in the nearest thousands.

[3] 12 Statutes at large, 294; *Quarterly Journal of Economics*, III, 445 *et seq.*; Bolles, III, 17, 18, 160, 161; Howe, 81–90. See also House Report, No. 552, 50th Congress, first session, February 21, 1888.

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held against the federal treasury for their expenses in equipping troops. By an act of 1862[1] the duration of the tax was limited to a single year and all further assessments were suspended until 1865; and in 1864 the tax was practically repealed.[2] Thus, $20,000,000 represents the total amount which Congress attempted to draw from the country by means of apportioned taxes during a struggle which required an increase of all other taxation to an extent that would have seemed absolutely impossible at the opening of the war. It will be instructive to present in a single table the payments made under the law of 1861 during the years when they were largest, and to contrast them with the receipts of the federal government from other taxes. The results, stated in the nearest thousands of dollars, are as follows[3]:

Years.	All Other Taxes.	Direct Tax.
1861	$39,582	
1862	49,056	$1,795
1863	106,701	1,485
1864	212,057	476
1865	294,392	1,201
1866	488,274	1,975
1867	442,446	4,200
1868	355,553	1,788
Totals	$1,988,061	$12,920

Long after the close of the war, small payments kept dribbling into the treasury, the last being credited in 1888. The total amount paid or credited up to February 18, 1888, is stated at $15,360,000.[4] After allowing $2,125,000 for the cost of collecting the tax in the states where the quotas had been assumed, there remained an unpaid balance amounting to $2,554,000. The tax had been but partially collected in the seceding states; and this circumstance, with others, led Congress in 1891[5] to vote to return to the states the amounts that had been paid

[1] 12 Statutes at Large, 489.
[2] 13 Statutes at Large, 304.
[3] Scribner's Statistical Atlas, plate 81.
[4] House Report, No. 552, 50th Congress, first session, 45.
[5] 26 Statutes at Large, 822.

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and to remit the quotas that still remained due. Under this law, about $14,222,000 had been returned to the states by the close of the fiscal year 1895.

The direct tax of the Civil War, then, did not prove a more brilliant success than its predecessors. An exhibit of the net results to the United States from the exercise of the power of levying apportioned taxes may not prove uninstructive. The five direct taxes levied in 1798, 1813, 1815, 1816 and 1861 called for a total of $34,000,000. Of this amount, the government succeeded in collecting, within periods varying from thirteen to twenty-six years, the surprising sum of $28,100,000. From this, however, we must deduct the $14,222,000 returned to the states under the law of 1891. When this is done, it will be seen that, in the course of the one hundred and nine years that have elapsed since the federal government has possessed this valuable power, Congress has been able to collect the net sum of $13,880,000 from these apportioned taxes. Upon a liberal estimate, this is much less than one-tenth of one per cent of the total ordinary revenues of the United States since 1789, exclusive of the postal receipts.

3. *The inequalities caused by the constitutional rule.* — The direct tax of 1861 was assessed upon lands and dwelling-houses; but, since all the loyal states except two assumed their quotas, it became practically a general property tax. The federal census gives the assessed value of property in each state in 1860, as well as the *per capita* assessed valuation.[1] In order to show the inequality of assessment, Massachusetts, Rhode Island and Connecticut are compared with Michigan, Kansas and Minnesota. The results are embodied in the table on the opposite page, in which the *per capita* assessed valuation of all property is stated in the nearest number of dollars.

Thus it appears that a hundred dollars' worth of property was taxed in Minnesota nearly four times as much as in Connecticut; while the three Western states, in general, paid at three and one-half times the rate that was imposed upon the three Eastern states.

[1] Eleventh Census: Report on Wealth, Debt and Taxation, II, 59.

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States.	Quotas of Tax.	Amount of Tax *per capita.*	Value of all Property *per capita.*	Amount of Tax per Hundred Dollars of Property.
Mass. . .	$825,000	$0.67	$631	$0.106
R. I. . .	117,000	.67	716	.093
Conn. . .	308,000	.67	742	.090
Minn. . .	109,000	.63	186	.338
Kan. . .	72,000	.67	210	.318
Mich. . .	502,000	.67	218	.307

We may next compute the largest possible yield of a direct tax in the United States at the present time, and the inequalities that would be caused by the attempt to levy such an impost. The census of 1890 showed the smallest *per capita* valuation of assessed property to be in North Carolina.[1] The amount that could be collected by a direct tax must be gauged by the ability of this state to contribute to the support of the general government. In order to make the estimate of the yield of the tax as large as it could possibly be, under any circumstances, let us assume that the United States decides to ask from North Carolina an amount equal to all the taxes, state and local, which the property of the state was compelled to bear in 1890. As a matter of fact, to double the direct taxes, state and local, which property is now compelled to bear, would be a political impossibility in any section of the country; but we will suppose this to be done in North Carolina. In 1890 that state raised, for state and local purposes, the sum of $2,151,835 by *ad valorem* taxes on real and personal property.[2] This amounted to $1.33 for each person in the state. This figure sets the limit which Congress could not exceed in imposing the collective poll taxes which the constitution calls direct taxes. In 1890, such an apportioned tax of $1.33 would have yielded $83,287,000. If we assume a population of 70,000,000 at the present moment, we should get about $93,000,000 as the largest conceivable amount of a direct tax.

This estimate is probably two or three times as large as any tax that Congress would dare to ask for. It would impose upon the poorer states a crushing burden, and would cause an

[1] Eleventh Census: Wealth, Debt and Taxation, II, 59. [2] *Ibid.*, p. 412.

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amount of injustice that cannot be readily described. Moreover, it could never be collected, even in times of direst need, as the history of previous direct taxes has shown. If the tax should be needed for more than a single year, Congress would not venture to impose upon the poorer states more than one-third or one-fourth of the amount of their present property taxes. Thus, if we suppose a war, lasting four years, to call for all the resources of the country, Congress might hope to raise from twenty to thirty million dollars annually by means of this efficacious power conferred by the constitution. This, it will be remembered, presupposes that enormous inequalities would be tolerated and that a crushing burden would be imposed upon the poorer states. It also assumes, contrary to all previous experience, that such an unjust tax could be promptly collected.

The inefficacy of the power of apportioned taxation may be further shown by another comparison. In 1890 the state and local governments raised $443,096,574 by *ad valorem* taxes upon real and personal property. If Congress could reach this property uniformly with a tax only one-third as large as that imposed by state and local authorities, it could raise $147,697,000 by this means. If, on the other hand, the property of the poorest states should be taxed at one-third the rate imposed for local purposes and the other states should be taxed the same *per capita* amount, as required by the constitution, the yield would be but $31,000,000.

We may conclude this subject by examining the extent of the inequalities that would be perpetrated, if Congress should attempt to raise $93,000,000 by an extraordinary levy of $1.33 for each person in every state. For this purpose we may use the census figures of the *per capita* amounts of property assessed for taxation. At this point it may be objected that the assessed value of property is not, for all the states, a uniform proportion of the true valuation. It would be better to use figures of the true valuation of all property, if any such could be found that were anything more than the most conjectural estimates. As it is, we have only the statistics of assessed

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valuation available for scientific purposes. But these are sufficient in this case, because a comparison is to be made of the richer Eastern states and the poorer states of the West and South. Now it may happen, although nothing definite can be said upon the subject, that real property, in the poorer states selected for our table, is assessed at a smaller per cent of its true value than is the case in the richer states selected. For the sake of argument, this may be conceded. But it is perfectly certain that the amount of personal property that escapes the assessor in the richer states is far greater than in the poorer states. In Kansas, Nebraska, North Carolina and South Carolina, a far larger proportion of personal property consists of farm stock and household goods, which are readily found for the purpose of assessment. The intangible forms of personalty, which escape taxation almost wholly, are far more common in the richer states.[1] These forms of intangible wealth have probably escaped taxation in an increasing degree; for the census shows that the *per capita* amount of personal property assessed in Massachusetts had increased by only two dollars between 1860 and 1890. In Rhode Island the *per capita* assessment of personalty had decreased by nine dollars during the same period, and in New York it had decreased by eighteen dollars. We are safe in concluding that the census tables of property assessed for taxation cannot exaggerate the differences in wealth between such states as are chosen for our table. The probability is that such differences are even greater than are shown by the figures of the census; so that our results will underestimate, rather than overestimate, the extent of the inequalities.

The subjoined table shows the *per capita* amount of assessed

[1] "The taxation of personal property is in inverse ratio to its quantity: the more it increases, the less it pays." (Seligman, Essays in Taxation [New York, 1895], p. 27.) See the statistics presented by Professor Seligman, pp. 27–30. A single fact may be cited here. From 1860 to 1890 the assessed value of real estate increased from $6,973,000,000 to $18,957,000,000. During the same period the assessed value of personal property increased only from $5,112,000,000 to $6,516,000,000. — Eleventh Census: Report on Wealth, Debt and Taxation, II, 59, 60.

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property in each state selected for comparison, the figures being stated in the nearest number of dollars. It also shows the amount of the tax that must be assessed upon each hundred dollars of property, in order to raise each state's quota, estimated upon the basis of $1.33 *per capita*.

STATES.	AMOUNT OF TAX *per capita*.	VALUE OF ASSESSED PROPERTY *per capita*.	AMOUNT OF TAX *per* HUNDRED DOLLARS OF PROPERTY.
Mass.	$1.33	$962	$0.138
R. I.	1.33	931	.142
Kan.	1.33	244	.545
Neb.	1.33	174	.764
N. Car. . . .	1.33	145	.917
S. Car. . . .	1.33	146	.910

Thus the rate of taxation in Nebraska would be more than five times the rate in Rhode Island; while property in the Carolinas would bear about seven times the burden imposed in Massachusetts. It is not likely that Congress will ever attempt to perpetrate such an injustice, which would be not taxation, but robbery — a robbery of the weakest for the benefit of the strong; a robbery none the less because sanctioned by a constitutional rule begotten of the old strife over slavery.

4. *Opinions of various writers.* — Judge Story, writing long before the abolition of slavery, expressed the belief that the direct-tax clause was unjust. In view of the existence of slavery, however, he thought that "some artificial rule of apportionment" might be "indispensable to the public repose."[1] George Bancroft, after explaining the manner in which the direct-tax provision was introduced by Morris, said: "In this short interlude, by the temerity of one man, the United States were precluded from deriving an equitable revenue from real property."[2] Francis Bowen, in his discussion of the finances of the Civil War,[3] called the article obsolete, and held that it should be repealed. He wrote:

This article was adopted only as part of a compromise, being intended as compensation for the rule which ascertains the representa-

[1] Commentaries, §§ 993-997. [2] History, VI, 266.
[3] American Political Economy, p. 438 (New York, 1870).

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tive population, by adding to the whole number of whites three-fifths of the slaves. As there are no slaves now, this rule for apportioning the number of Representatives in Congress is obsolete, and ought to be abrogated, together with its appendage and offset, the rule for the apportionment of direct taxation.

More recently, three other writers have considered the subject. Professor C. F. Dunbar, discussing the experience of 1861, has written[1]:

The direct tax had, in fact, far less to recommend it in 1861 than at the beginning of the century. The inequality of apportionment according to population, serious enough at first, had been increased by the concentration of wealth in the commercial and manufacturing States.

Then he narrates the miserable failure of the tax levied as a war measure, and concludes as follows[2]:

The direct tax provided for by the constitution has at last been effectually discredited as a source of revenue, and it has also been too prolific of misconception and confusion to have any interest henceforth as a practical measure of finance.

Dr. Howe, after reviewing the history of apportioned taxes, wrote[3]:

Even admitting that the tax conformed roughly to justice a hundred years ago, when population was a rough criterion of the ability of the states to pay, it must be apparent that the unequal territorial distribution of wealth at the present time renders even an approximation to justice impossible.

Finally, Francis A. Walker discussed the subject in one of his last books. He said:

The provisions of the constitution regarding direct taxes, again, are such that it might just about as well have declared that such taxes should not be imposed at all.

And then he explains:

If the amount of the tax were to be made large enough really to bring out the resources of the older and richer states, the newer and

[1] *Quarterly Journal of Economics*, III, 445. [2] *Ibid.*, 461.
[3] Taxation in the United States, p. 84.

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poorer states could not pay their share. If, on the other hand, the amount is kept so low as to be within the means of the frontier states, the proceeds for the whole country will be insignificant.

Mr. Walker's conclusion is as follows:

> Three times has the general government undertaken to levy such a tax; but in each case the amount raised was small in proportion to receipts from other sources. In each case the collection of the tax excited bitter opposition. In each case large portions of the tax were left uncollected, after the lapse of years. It would not be a very hazardous prediction that the United States government will never again resort to this mode of raising revenue.[1]

Against the opinion of Chief Justice Fuller may be placed that of one of the dissenting judges in the income-tax cases. Mr. Justice White declared[2] that the rule of apportionment, especially as interpreted in 1895, prescribes "the most flagrantly unjust, unequal, and wrongful system of taxation known to any civilized government." In the light of all our experience of the operation of the direct-tax clause, the reader will have no difficulty in deciding between the opinions of Justices Fuller and White.

The writer is unable to dismiss this subject without referring to the experience of the Confederate States in trying to secure revenue by apportioned direct taxation. Fortunately for the cause of the Union, the constitution of the Confederacy borrowed from that of the United States the provision that direct taxes should be apportioned according to the rule of numbers. The result was what reason and experience could have foretold. On account of the blockade of its ports, the Confederacy was obliged to depend very largely upon internal taxation as a support for its loans and paper money. A direct war tax was apportioned among the states, which were given the privilege of assuming its payment. Some of the states then issued bonds, in order to secure the means for paying their quotas. In these cases the tax was converted into a loan, at a time when

[1] The Making of the Nation, pp. 145, 146 (New York, 1895).
[2] 158 U. S. Reports, 713.

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the public credit was beginning to be strained to a perilous point. Elsewhere the tax was only partially collected. The net result was that direct taxes furnished only one-third of one per cent of the total revenue of the Confederacy in one year, and two-thirds of one per cent in another.[1] Jefferson Davis has left us a melancholy record of the failure of the Confederate States to reach their principal sources of wealth, land and slaves, by means of apportioned taxes.[2] It need not surprise us, therefore, to find the direct-tax clause of its constitution assigned as an important cause of the downfall of the Confederacy.[3] Yet this was the exact provision whose application has been so widely extended by the recent decision of our Supreme Court that, apart from customs, excise and some other duties, the United States has no clear power to reach the wealth or income of its citizens, save by taxes apportioned according to the rule of numbers.

CHARLES J. BULLOCK.

WILLIAMS COLLEGE.

[1] See J. C. Schwab, "The Finances of the Confederacy," POLITICAL SCIENCE QUARTERLY, VII, 38–56 (March, 1892).

[2] Rise and Fall of the Confederate Government, I, 495, 496 (New York, 1881).

[3] See the *Century*, LIII, 38.

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THE CURRENCY ACT OF MARCH 14, 1900.

SINCE the resumption of specie payments in 1879, the monetary system of the United States has been weak in three respects: (1) The United States Treasury, although responsible for the convertibility of a large mass of credit money, has had inadequate control of its resources and only an artificial connection with the money market; (2) there has been no definite legal provision for the maintenance of the gold standard; (3) the bank-note currency, instead of responding to the needs of the money market and thus lightening the Treasury's burden of redemption, has failed to be of any service, either in normal or in critical periods.

In this paper it is my purpose to consider the general effect upon the situation of the Currency Law of March 14, 1900. Does it break the "endless chain"? Does it render easy the maintenance of the gold standard? Does it make impossible the recurrence of the critical times of 1894, 1895 and 1896? Are the amendments to the National Bank Act an improvement or the opposite? Questions of this character I propose to discuss: I will not stop to analyze or criticise the act in detail.

I.

It should be noted, first, with respect to the act, that the gold standard is no more than a statutory declaration of an existing fact. Since 1873 gold has been the standard money of the United States, and no alternative has been possible. The law of 1878 authorizing the coinage of silver dollars, although it called them standard dollars and made them full legal tender, was not, as is often assumed, a step toward bimetallism. The silver dollar was between 1878 and 1890 a piece of fiat money. The real dollar of the United States was 25.8 grains of standard gold, and its purchasing

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power depended entirely upon the value of gold. The silver dollar in our monetary supply occupied the same position as that held in Germany and France by the silver thaler and the silver five-franc piece. Technically it was fiat money, but implicitly and practically it was credit money. It was not a promise to pay gold, and there was no provision for its redemption in gold; yet the United States government, having made it a legal tender, could not have permitted it to fall below parity with gold, without great injury to the national credit. The law making it legal tender practically pledged the faith of the government as a guaranty of its equivalence with gold. In the Sherman Act of 1890 the parity clause formally recognized the government's obligations with regard to the silver dollar, and so made it a piece of credit money, redeemable, not directly in gold, but in equivalent value.

So far as the silver dollar is concerned, the act of March 14 writes nothing new upon the statutes. Section 1 is merely a combination of the laws of 1873 and 1890. It names gold as the "standard unit of value" and declares that all forms of money issued or coined "shall be maintained at a parity of value with this standard," it being "the duty of the secretary of the treasury to maintain such parity." The status of the silver dollar, therefore, remains exactly what it has been since 1890.

In the status of the greenback and of the treasury notes of 1890, however, the law makes a definite change. Until 1890 the greenback was a "coin" obligation and was legally redeemable in either gold or silver. The law of 1890, while leaving it still a coin obligation, made its redemption in gold compulsory, whenever such redemption was necessary to maintain its parity with gold. The act of March 14 makes the greenback and the treasury note both gold obligations, declaring that they "shall be redeemed in gold when presented to the treasury for redemption."

Thus, with regard to the greenback and the treasury note, the law becomes clear and imperative, where before it was vague and inferential. It simply makes mandatory upon the secretary

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of the treasury a policy which by improper construction of preëxisting statutes he might have avoided. This part of the law is most satisfactory, for there should be no room for discussion about the convertibility of paper money. Yet the vagueness of the law prior to March 14 did not leave an opening for so much mischief as has often been assumed. If Mr. Bryan had been elected president in 1896, a free silver secretary of the treasury might, indeed, have insisted upon the redemption of greenbacks with silver dollars, but he could not thus have thrown the country upon a silver basis, for he could not have caused any inflation of the money supply. The adoption of such a policy would undoubtedly at first have shaken the foundations of credit and lifted gold temporarily to a premium, but the level of prices could not have been much affected.

The law makes very elaborate provision to insure the redemption of the greenback in gold, without embarrassment to the treasury. The pocket money of the people hereafter is to be silver certificates. Greenbacks are to be issued only in denominations of ten dollars and upward. The treasury notes of 1890, of which only about $80,000,000 are now outstanding, are to be retired during the next two or three years and silver certificates issued in their stead. Hence, the $346,000,000 of greenbacks now outstanding are the only form of money for the direct redemption of which the treasury is to be responsible. The law creates a gold redemption fund of $150,000,000 and provides that greenbacks once redeemed shall not be issued again except in exchange for gold. The reserve fund evidently is always to stand at $150,000,000, and may consist partly of gold and partly of greenbacks.[1] The secretary of the treasury may exchange greenbacks in this fund

[1] The reserve fund can never rise above $150,000,000, including both gold and notes. It will necessarily fall below this sum, however, if the secretary shall ever take advantage of Section 3700 of the Revised Statutes and buy gold at a premium, for then the amount of greenbacks taken from the fund will exceed the amount of gold added to it. If the fund once fall below $150,000,000, it apparently cannot be restored to that figure until the amount of gold in the fund chances to fall below $100,000,000, when the secretary must sell bonds and restore the gold "to the maximum sum of $150,000,000."

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for gold in the general fund of the treasury. But whenever the gold in the redemption fund falls under $100,000,000 and cannot be increased by exchanges of greenbacks for gold in the general fund, the secretary must obtain gold by the sale of bonds sufficient to bring the gold in the reserve fund up to $150,000,000. The greenbacks thus released from the reserve fund will pass into the general fund of the treasury and may be used for any purpose except "to meet deficiencies in the current revenues." Thus, the law provides for the certain redemption of the greenback. It leaves no discretion with the secretary of the treasury. When his gold fund is depleted, he must sell bonds.

It is to be noted that these provisions of the law do not confer upon the secretary of the treasury any new authority. They merely prescribe a policy which he formerly had authority to pursue, if he deemed it wise. Under the War Revenue Act of 1898 he had authority, and still has, to issue three per cent bonds for any lawful purpose, whenever in his judgment it is necessary. Hence, even though the act of March 14 had not passed, the secretary would still have had authority to maintain the gold fund at $150,000,000 and to issue bonds for its replenishment whenever it became depleted. The peculiarity of the law of March 14 is its mandatory prescription of a policy conceived to be sound.[1]

[1] Professor Laughlin's view, set forth in the July (1900) *Journal of Political Economy*, that the gold standard is not securely established, because certain obligations of the government may be paid in silver dollars, although no means are provided for their redemption or for the maintenance of their parity with gold, is unduly pessimistic. Government bonds cannot be made a test of the gold standard; for their character is fixed by contract at the time of their issue, and they must be paid in what the letter calls for. By the maintenance of the gold standard is meant that dollars of every kind are kept equal in value to the gold dollar. Experience has proved that such parity can be maintained in either of two ways: (1) By direct redemption, (2) by limitation of the money supply. In the case of the silver dollar, ample provision seems to have been made for the maintenance of its gold value by the second method. Since the free export of gold is provided for by the redemption of greenbacks, and is assured by the borrowing power of the United States, inflation of the money supply sufficient to send silver dollars to a discount is practically impossible. As for the payment of government bonds in silver dollars, that could not disturb the gold standard — to say nothing of the fact that any secretary who undertook such payment would find himself embarrassed by the scarcity of silver dollars at his disposal.

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II.

The most important provision of the law is one which does not appear to have been generally understood. In the discussion in Congress very little was said about it and no particular reason was given for its insertion. It is that part of the law which provides that greenbacks taken from the reserve fund in exchange for gold shall not be used "to meet deficiencies in the current revenues." This is a vague expression; but if it is correctly interpreted, it will prove to be the most effective of all the provisions intended to guard against depletion of the gold fund. It is the keynote to a policy which would have prevented the disastrous operation of the "endless chain" in 1894 and 1895, if it had been promptly adopted — as it might have been, for no legal barrier has ever stood in its way. All the other elaborate measures for the preservation of the gold fund are of little consequence beside it. If they were all dropped, the gold reserve would remain as safe as now.

In order to make this point clear, it is well to examine the so-called "endless chain" and to consider some of the theories accounting for its operation. The term "endless chain" is intended to describe the fact that greenbacks may be presented at the treasury in exchange for gold, then paid out by the treasury and again presented as a demand for gold. Since this process, if long enough continued, may exhaust the gold supply of the treasury, the operation of the "endless chain" — in other words, the redemption of greenbacks — is regarded with much apprehension by the average business man. Evidently the "endless chain" can be broken only in one of two ways: (1) By the retirement of the greenback; (2) by the shifting of the burden of redemption from the government to the banks, as was proposed in Congressman Walker's bill, according to which each bank was to become responsible for the redemption of greenbacks, in proportion to the amount of bank notes it issued. Neither of these plans has been adopted. The act of March 14 does not attempt to break the "endless chain," but merely to render its operation innocuous.

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The most commonly accepted explanation of the "endless chain" attributes all of the mischief to the greenback. In 1895–96, when the gold reserve in the treasury fell at times below $50,000,000, a cry promptly went up that, if the greenback were only out of the way, the gold standard would be safe. The idea prevailed that the greenback, being a direct demand upon the government for gold, was maliciously presented for redemption, in order that the treasury department might be embarrassed. People have had the idea that in any time of unusual financial stringency or disturbance the greenback is certain to appear at the treasury windows and so to increase the distress. Thus, in 1894, 1895 and 1896 the heavy redemptions of the greenback were commonly attributed to the fear at home and abroad with regard to the maintenance of the gold standard. It was thought that the agitation for free silver unsettled the faith of Europe in the money of the United States and that, therefore, holders of greenbacks were anxious to convert them into gold before it was too late. In the same way, the heavy exports of gold from this country were accounted for. Foreigners, it was said, sold American securities because of their fear lest they might be compelled to accept silver instead of gold, and these sales, turning the balance of trade against us, necessitated the outward movement of gold. By some the operation of the "endless chain" has been confidently attributed to the wicked machinations of millionaire financiers and bankers in New York City. It is easy to find intelligent men who are convinced that greenbacks were scraped together in 1895 and 1896 and presented to the treasury for redemption by men who wished thereby to force the government into bond issues, in order that they might profit by their purchase and sale.

The trouble with these explanations is the fact that they do not explain. If unscrupulous bankers by manipulation of the greenback can draw gold from the treasury and compel the issuance of bonds to their profit, why have they not worked this scheme oftener? In 1883, for instance, and again in 1885, the gold reserve fell to $125,000,000, and a syndicate of wicked millionaires might easily have collected greenbacks and

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embarrassed the government by demanding their redemption. Nothing of the sort was attempted. In 1883 only $500,000 in greenbacks were presented for redemption in gold, and in 1885 only $7,000,000. The year 1884 was marked by financial distress and panic, and there was an abundance of talk then about the insecurity of the gold standard, on account of the Bland-Allison Act of 1878. In fact, all through the 80's, as silver dollars were piling up in the treasury vaults at Washington, there were frequent predictions that the gold standard could not long endure. The so-called "balance of trade" was often against this country, and heavy exports of gold were called for. Foreigners were declared to be selling American securities, because of their loss of faith in our standard of value. Yet in all this decade practically no gold was demanded from the treasury in exchange for greenbacks. The total redemptions amounted to only about $15,000,000. A change set in, however, in 1890. In that year $6,000,000 were redeemed in gold; in 1891, $9,000,000; in 1892, $102,000,000; in 1893, $84,000,000; in 1894, $117,000,000; in 1895, $158,000,000; and in 1896, $78,000,000.

It is evident that mere doubt as to the monetary standard will not always set the "endless chain" in operation. Nor is the exportation of gold alone sufficient to turn the crank. In 1884, 1886 and 1889 the net exports of gold amounted to $90,000,000, but there was no run upon the treasury in any one of those years. What condition existed in the 90's that was not present during the 80's? I think the answer must be abnormal currency expansion. Prior to 1890, new silver dollars were being injected into circulation in the form of silver certificates at the rate of about $30,000,000 a year, but at the same time the bank-note circulation was decreasing, so that the net expansion of the currency did not amount to inflation. That the money supply did not become redundant is evidenced by the fact that in all but three years of the decade beginning with 1880 gold was imported. Our money supply in these years did not grow more rapidly than the need for money. After 1890, however, the increase in silver currency was

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doubled, while at the same time the contraction of the banking circulation ceased. Consequent upon the inflation of the currency a steady export of gold set in and continued until 1897. In 1891 the net exports of gold were $67,000,000; in 1893, $87,000,000; in 1895, $30,000,000; and in 1896, $78,000,000. It is to the currency inflation which caused this steady outward flow of gold, kept up for seven years, that we must look for the force which set in motion the "endless chain."

It is necessary to have a clear idea of the causes of this gold movement. In the discussions of the time, and in the Congressional debates, the outward flow of gold was attributed entirely to Europe's loss of confidence in our money. European capitalists were said to be selling American securities and to be demanding gold in payment for them. In order to liquidate our great indebtedness to the Old World, it was explained, we were obliged to part with gold, even though we greatly needed it. Exporters of gold, not being able to obtain it from the banks, presented greenbacks and Sherman notes at the treasury windows, and so brought on that state of apprehension which resulted first in the panic of 1893 and then in the embarrassing and apparently useless bond issues of 1895–96.

This current and common explanation of the "endless chain" is, in my opinion, unscientific, inadequate and entirely incorrect. It is impossible for gold to flee from a country steadily for seven years unless the supply in that country is in excess of its needs. Granted that we were called upon by Europe to liquidate a large part of our indebtedness, gold is not the commodity with which that liquidation would be effected. As any one familiar with the first principle of foreign trade must admit, the liquidation of an international debt must be mainly in goods, not in gold. No country will send gold in payment of foreign indebtedness, so long as it has any other commodity with which it can part on more advantageous terms. The liquidation of international indebtedness means increased exports of goods. What goods shall be exported is determined by prices, foreigners naturally selecting those goods the prices

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of which are relatively lowest. Gold is never one of those goods, except when its value is relatively less here than abroad. In other words, we exported gold in the first seven years of the last decade, for the simple reason that we had a surplus of gold. That is another way of saying that our money was redundant, and that in consequence an adverse balance of trade was created.

This is stating a mere truism in the theory of foreign trade; yet it is so important and has been so persistently neglected in discussions of recent financial events, that I do not feel like apologizing. Between June 30, 1890, and June 30, 1893, the monetary circulation of the United States received additions which it could not be expected to absorb. They came from three sources. First, the Sherman Act led to the issue of about $150,000,000 treasury notes. Then came the increment from the gold mines of this country. This amounted to about $100,000,000, of which probably $60,000,000 became available for monetary use. Finally, the treasury's cash balance, although the revenues yielded a surplus each year, declined, because of bond purchases, from $245,000,000 to $121,000,000, so that $124,000,000 was taken from the treasury vaults and put into circulation.[1] From these three sources the money in the banks and in the hands of the people received a net increment amounting to over $300,000,000. The period between 1890 and 1893 was not one of remarkable expansion in business. The collapse of the Barings in 1890, startling the financiers of Europe and checking enterprise in various parts of the world, paralyzed the arm of the investor in this country and brought many undertakings to a standstill, particularly in the developing West. The prices of staple commodities during this period declined some twenty per cent. Under such circumstances, it is not remarkable that the monetary circulation could not absorb an increase equal to twenty per cent of the whole. It was this inflation of our money supply, and not loss of confidence in the monetary standard or European distrust

[1] Inasmuch as the public deposits in national banks during this period fell from $37,000,000 to $15,000,000, the net addition to the currency through treasury operations was only $102,000,000.

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of our securities, which led to gold exports in 1892, to the impairments of the treasury's gold reserve, to the disturbance of business credit, and so to panic.

The links in the "endless chain" are greenbacks, but the power at the crank which turns the chain is the necessity for gold exports produced by artificial inflation of the currency. It is for this reason that I regard the clause prohibiting the reissue of greenbacks to meet deficiencies of revenue as the most important feature of that part of the currency law which is designed to fortify the gold standard. Inflation of the currency so produced is quite as artificial and mischievous as inflation produced by the issue of paper money. This fact was illustrated by events in the three years following the panic of 1893. As is always the case after the culmination of a crisis which destroys capital and cripples entrepreneurs in every field of industry, business was flat, factories were closed, labor was unemployed and the need for money was greatly curtailed. A clue to the conditions prevailing in these three years is furnished by comparison of the deposits in commercial banks with those in savings institutions. The former declined; the latter increased. This, of course, did not mean that the savings of the people were increasing. It meant simply that capital, being unable to find profit in commercial enterprises, was seeking for a time some small return in old and well-known channels of investment.[1] Notwithstanding the fact that all signs indicated a lessening demand for money, additional money was being thrust into circulation from three sources. There was, first, the normal increase from the gold mines of the country. In the second place, the United States Treasury was daily paying out more than it received, the total deficit in these three years amounting to $150,000,000. Finally, the national banks enlarged their circulation by some $22,000,000.[2]

[1] As a result of their experience in these three years, many of the savings institutions in this country found themselves compelled to reduce their rate of return to depositors from four to three per cent.

[2] The circulation of the national banks in January, 1894, stood at $193,000,000; by October, 1895, it had increased to $207,000,000; and by October, 1896, to $222,000,000.

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These additions to the money supply held down the interest rate in New York City, to which the idle money gravitated, and so made that place the best market in the world for all forms of indebtedness. The prices of securities there were continually bolstered by the influx of money, which could find no employment except in the hands of speculators in stocks and bonds. As naturally as a ship runs before the wind, international securities came across the Atlantic and our gold, as well as our goods, went back in payment. For the inflation of the currency which kept the "endless chain" turning during this period and brought the United States Treasury to the verge of bankruptcy, the deficiency in the revenues was mainly responsible. The treasury was daily thrusting into the circulation money for which the people had no need.

Under the law of March 14, even though the same untoward set of circumstances arise again, there is reason for hoping that mischievous results will be prevented. The secretary of the treasury is allowed very little discretion: he must do the right thing at the right time. In the first place, if an outward movement of gold reduces his gold stock, he must sell bonds before the reduction assumes serious proportions. These bond sales, by absorbing idle money, will counteract the causes back of gold exports and thus tend to check the demand for the treasury's gold. Furthermore, — and, in view of recent experiences, this is most important, — if there is a deficiency of revenue, the secretary must not pay out the greenbacks which are released by the gold received in payment for bonds. This restriction, if wisely interpreted, means that the secretary, if there is a deficiency in the revenue, must cover that deficiency by the sale of bonds. Hence, if conditions like those which prevailed in 1895–96 should exist again, there would be bond issues for two purposes: (1) To replenish the gold reserve; (2) to make up the deficiency of the revenue. If the law should be thus interpreted, the available cash balance in the treasury would remain stationary, except in so far as it would be increased by the addition of greenbacks set free from the reserve fund in exchange for gold. This construction of the

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law enables the secretary to contract the currency supply of the country at will, when such contraction is necessary to prevent an exportation of gold that threatens to embarrass the national exchequer. It would perhaps be well for him to make special bond issues for these two purposes. He has authority to do this, for, under the War Revenue Act of 1898, he may issue three per cent bonds to cover a deficit and, under the law of March 14, 1900, three per cent bonds to replenish the gold reserve.

The deficiency clause is construed by some to mean that the secretary, when a deficit exists, may pay out the redeemed greenbacks until the total deficit foots up a sum equal to the cash balance in the treasury at the time the deficit set in. For example, the available cash balance on June 14, 1900, was $147,000,000. Under this construction, even though a deficit had then arisen in the revenues, the secretary might have gone on paying out redeemed greenbacks until the excess of expenditure over receipts equalled $147,000,000. If this construction be accepted as correct, it is evident that the secretary will have practically no control over the money supply to help check the operation of the "endless chain." That was the trouble in 1895–96. The proceeds from bond sales in those years were poured back into the circulation almost as fast as they were received at the treasury, and so the forces at work drawing gold from the treasury were not counteracted. The more natural construction of the law makes the treasury department, in a sense, the regulator of the currency. In ordinary times it will be a wise policy for the secretary to maintain his available cash balance at nearly a uniform level, so that the operations of the department shall neither excite nor depress the money market. In periods of expansion, when stringency threatens, he may safely give some relief by increasing the deposits in the national banks. On the other hand, in periods of contraction, when gold exports are threatening the resources of the treasury, he has the power gradually to withdraw government funds from circulation and so to protect the gold reserve. With regard to the policy of the secretary when surplus revenues are

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depleting the circulation, the law is not mandatory. In fact, it would be impossible to lay down any hard and fast rule, determining when the secretary should ease the money market by the purchase of bonds or by increased deposits in the banks. The proper manipulation of surplus revenues must be left to the discretion of the secretary of the treasury. Rising interest rates in New York City and a fall in foreign exchange rates, taken together, furnish pretty good evidence that the treasury department, if it is collecting surplus revenues, is absorbing money needed by the people and should generally warrant a purchase of bonds or increased deposits in banks. In general it will be safe to adhere to the rule that the cash locked up in the vaults of the treasury should be kept, so far as possible, at a uniform amount. In other words, the treasury's cash should be so managed as to interfere as little as possible with the natural developments of the money market.[1]

The fact is worth noting that gold movements not caused by an artificial inflation of the money supply are not likely to embarrass the treasury department. An inflation due to the issue of new paper money, like the treasury notes of 1890, is artificial. So is an inflation due to a deficit in the national finances. So is an inflation caused by increased issues of bank notes based on bonds, as I shall explain later. When the money supply is enlarged in any one of these three ways to an extent sufficient to bring about an export movement of gold, the precious metal is liable to be taken from the treasury stock. But when gold exports arise from an increase in the gold supply of the country, the cause of the movement carries with it the means of effecting it. The banks find themselves able to part with gold during the year and yet maintain an undiminished stock. When the mines of the United States produce a surplus of gold, it is naturally exported, and the exporters get it either directly from the banks or from the treasury depart-

[1] This policy appears to govern the present secretary's management of the cash balance. Notwithstanding the extraordinary character of treasury operations during the last three years, they have not been permitted to work even a temporary contraction or inflation of the circulation.

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ment in exchange for gold certificates. In 1889, 1890 and 1891 our net exports of gold footed up $111,000,000, yet very little gold was obtained in these years from the treasury department by the redemption of greenbacks, and the gold reserve was not menaced.

III.

The new law makes five important changes affecting the national banking system: (1) It authorizes the issue of bank notes up to the par value of the bonds deposited, provided those bonds are the new two per cents for which the fives of 1904, the fours of 1907 and the threes of 1908 may be exchanged; (2) it permits the establishment of banks with a capital of $25,000 in places of a population not exceeding 3000; (3) in the case of banks depositing the new two per cent bonds, it reduces the tax on the circulation from one to one-half of one per cent, the basis of the tax being the average amount of notes in circulation and not, as formerly, the total amount issued to the bank; (4) it repeals that part of the old law which prohibited a bank from increasing its circulation within six months after it had retired any portion of its notes; (5) it restricts the issue of notes of the denomination of five dollars to one-third of a bank's total issue.

Inasmuch as experience has shown that the national bank note has been incapable of performing the important service which justifies bank-note issues, it is difficult to find any good reason why provision should be made, as is done in this law, for the enlargement and perpetuation of the system. In fact, advocates of the measure in Congress advanced no reasons whatever. It was simply taken for granted that, since the security would be adequate, the bank notes must be good, and that the measure needed no further justification. Doubtless the desire of the Republican leaders to refund a large part of the national debt at a low rate of interest is at the bottom of the changes of the National Bank Act. It is morally certain that the United States could not sell two per cent bonds at par, unless they carried with them special privileges. Just as the

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system was established during the Civil War for the purpose of creating a market for government bonds, so now it appears to have been amended for the same purpose.

In support of the amendments, two arguments have been urged which are worth examining. In reference to the increase in circulation which will naturally result, it is claimed that this is desirable, because it will economize the use of gold and at the same time supply the country with additional money when most needed. With the experience of 1895–96 so fresh in memory, one would hardly expect to find Congress deliberately planning to lessen the gold base of our monetary system. In 1896 it was estimated that our stock of gold amounted to $600,000,000, but the real amount in the country was probably less. At the present time there is supposed to be nearly $1,000,000,000 of gold in the country, although the officials of the treasury are unable to locate over $750,000,000. The proportion of gold is less than fifty per cent of the total money supply. Doubtless this proportion might safely be reduced, except for the fact that the bulk of the credit money is government obligations, which depends for its parity upon the United States Treasury, an institution having no normal connection with business. If, for example, our fiduciary currency were issued by a large banking institution, like the Bank of England or the Bank of France, or if it were under the control of a few large banks, as is the case in Canada, it is quite possible that the gold stock of the country might safely be kept at less than one-half of the total money supply. Unfortunately, however, our monetary system is most awkward and most easily disturbed. Of all the great civilized nations of the earth which are using gold as money, the United States has the worst system and is at the greatest disadvantage. The gold standard is maintained here artificially and by main force. In France, Russia, Austria and Germany the responsibility falls upon a single bank in each country. That bank, being in close touch with business, is able to note the slightest change in the financial barometer. Through a gradual contraction or expansion of its circulation, it averts peril before the business community is aware

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of the menace. The operations are all so natural, and so much in accord with the ordinary procedure of business men in the protection of individual credit, that they no more attract notice than do the heart pulsations of a healthy man. Each bank, in guarding its own solvency, protects and maintains the standard of value in its country. In England, owing to the restrictions upon bank-note issues, the matter is less simple. The Bank of England in times of stress is forced to advertise its anxiety and to call on the world for relief by the offer of high rates of discount; yet that bank is able to foresee danger and so take steps to minimize the evil in advance. In the United States, however, there is no single business institution, and no group of large institutions, in which self-interest, responsibility and power naturally unite and conspire for the protection of the monetary system against twists and strains. We have developed here a most elaborate system of deposit credits. Just as Shakespeare often makes the simplest word in the English language stagger under its burden of meaning, so we make every dollar carry a heavy weight of credit responsibility. Our money supports a great structure of promises to pay, which trembles whenever the foundations are disturbed. An export of gold, therefore, if it comes from the stock on which our credit system rests, and not from fresh supplies, is always a most critical matter; yet, because of the artificial character of our system of redemption and the impossibility of coöperative prescience among our great banking institutions, and because of the inelasticity of our banking circulation, the country is always liable to lose gold at times when it is needed to sustain confidence in the business world. So long as the United States preserves its present monetary system, prudence demands that its stock of gold be kept so abundant that the export of $100,000,000, more or less, can neither embarrass the treasury department nor excite apprehension among business men. Otherwise, it is to be feared that the gold standard in this country will always be in a state of unstable equilibrium.

The argument for the act which is based on the assumption

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that it will give the country more money, especially in the rural districts, where it is assumed to be most needed, is a typical sample of current fallacies with regard to the money question. The act will, of course, give the country no more money: it will simply add to its stock of paper money and take away from its stock of metal. Should the banks increase their circulation by $200,000,000 during the next two years, the country will not have $200,000,000 more money than it would have had, if the act had not been passed: it will simply have $200,000,000 less gold in use as money. Nor will the act cause the slightest increase of the monetary circulation in the rural districts. If the country banks increase their issues, and if new banks with small capital add to the supply, a census would discover no more money in the pockets of the country folk a year hence than it would find there now. There would simply be a change in the character of the money, bank notes having taken the place of greenbacks and silver certificates. It seems hardly worth while to make these statements about the effect of the act on the country's circulation, yet the fallacies which call them out are given respectability by the prominence of the men who utter them, and it does seem necessary to call the attention of our statesmen to the fact that, when a country has once decided to use gold as its standard of value, no law can have the slightest effect upon the amount of money which that country or any part of it will absorb and utilize.

The national bank notes, as at present issued, are a much more dangerous element in the currency than the greenback or the silver dollar. This fact does not seem to be generally understood. On no other supposition is it possible to account for the indifference with which Congress has voted for a measure facilitating and perpetuating their issue. The national bank note is usually said to be inelastic. That is not strictly true. The circulation does expand and contract, but the changes in volume have practically no relation to the needs of business for money. The system is founded upon an ancient fallacy — namely, that the demand for capital is identical with

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the demand for money. These two things are, of course, in fact entirely different. The one may increase, while the other is stationary. As a matter of fact, the demand for money is often decreasing while the demand for capital is gaining in strength. The Bank of England, during the restriction period at the beginning of the nineteenth century, when redemption of its notes was forbidden by law, furnished a spectacular exhibition of the evil effects of a confusion of these two demands. Its managers held that they could not inflate the currency with bank notes, so long as they issued them only in response to the demands of borrowers who offered good security, failing to see that increasing profits for the employment of capital within the country did not necessarily mean an increased need for a generally acceptable medium of exchange. Practical financiers and business men in London were so much in sympathy with the bank's view of the matter that the gulf between the bank note and the gold sovereign was currently regarded as due, not to a depreciation of the bank note, but to the appreciation of gold. One of the most useful services of the "Bullion Report" was its exposure of the unscientific character of the bank's policy in this respect. That report presents a very clear demonstration of the important truth that a bank of issue must regulate its circulation, not in accordance with the demand for loans, but in accordance with the rise and fall of foreign exchange rates, an export of gold indicating under almost all conditions an excessive issue of bank notes.

Underlying the national bank-note system is the assumption that an increasing demand for money will be accompanied by a rise in interest rates and a decline in the prices of securities, so that banks will be able to buy the security for their notes at low figures and furnish the needed increase to the currency. Unfortunately, these assumptions are seldom in accord with the facts. Rising interest rates, due to the increase of opportunities for the profitable employment of capital, are not always accompanied by a need for more money in the hands of the people. They do, indeed, generally indicate that the total volume of exchanges in the country is swelling, but the increase

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is usually more than taken care of by the expansion of the credit system which results from the growth of confidence caused by good times. The conditions do not admit of exact analysis. We know merely that bank loans and bank deposits may be much swollen by the call for capital from developing industries, and yet that the amount of money needed by the people for their daily exchanges need not greatly increase. There is merely a need for increased bank reserves, but that need cannot be met by the issue of bank notes.

Furthermore, it is not true that the prices of securities usually decline as the rate of interest moves up. There are three distinct rates of interest in the money market, each of them dependent upon different sets of demand and supply relations. There is the commercial rate, which depends upon the amount of capital or loan funds[1] in a country seeking investment for periods of from thirty to ninety days. The demand for this capital comes from merchants and manufacturers. There is the investment rate of interest, which is paid upon loan funds seeking investment for a period of years. These funds are supplied by people who do not wish to employ their savings in active business, and the demand comes chiefly from great private and public corporations. There is also the call-loan rate of interest, which is the rate paid by the speculator in stocks or produce. The speculator stands among borrowers as a residual claimant upon capital. He gets temporary control of capital while it is *en route* from the saver to the entrepreneurs, and he is forced to bid a rate high enough to cause it to rest in his hands a few days. When the amount of capital seeking direct employment is larger than the demand,

[1] Although the terms "capital" and "loan funds" represent different concepts, I use them as synonyms, because under analysis they revert to the same thing — that is, the wealth saved for productive purposes. The economist regards the rate of interest as related to the supply of capital; the practical man thinks of it as dependent upon the amount of money in banks, by which he means the lending capacity of banks. The banks, of course, do not lend capital: they lend credit, the power to obtain capital. As this lending power comes from the savings of the community, it rises and falls with changes in the amount of capital seeking employment, the connection between the two being as necessary as that which phrenologists suppose to exist between thought-power and brain-bulk.

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even though for a brief period, the speculator names his own rate; but within a week changed conditions may force him to borrow at a rate which would put all entrepreneurs into bankruptcy. These three interest rates are not to be explained merely by the general expression of demand for and supply of capital. They depend upon entirely different sets of circumstances, and they often fluctuate without much relation one to the other. It is quite possible for the commercial rate to be advancing on account of prosperous industries, while the investment rate remains unchanged. The prices of bonds depend entirely upon the rate of interest satisfactory to the investor looking for long-time uses of capital. That rate may remain stationary or even be falling off, while rising profits in business are pushing up the rate on commercial discounts. So it happens that the prices of government bonds are often firm at the very time when increasing activity in the industrial world is calling for additions to the currency, so that the national banks cannot increase their circulation without first locking up part of their loan funds in securities that yield a very small return.

Under the present system, a banker must take into account three different circumstances, when considering the advisability of increasing his circulation: (1) Is there any danger that the price of government bonds will fall on his hands? (2) Will he be able to get the bank notes into circulation? (3) Will he be able to keep them in circulation during a possible lull in business activities? Only one of these questions has anything to do with the need for money in the community. If the second question were the only one he was obliged to consider, then the system would yield an elastic currency; but the other two questions cannot be ignored. In fact, to the practical banker the first question probably seems more important than either of the other two, and the third quite as important as the second. If government bonds are selling at what is regarded as a high price, so that they yield (say) less than two per cent on the purchase price, a banker knows that he is taking a risk when he buys them. A war in Europe, a political accident in

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this country, over-speculation in Wall Street — any such untoward event, even though the credit of the United States is not affected, may cause a drop in bond quotations. On the other hand, he may well doubt if they will ever sell at a higher level. In his uncertainty with regard to the probable future of bond quotations, he will not make the investment, even though he has evidence that the community is absorbing daily more and more money and that he will be able to put into circulation $100,000 more of bank notes; for the small profit from an increased issue of bank notes will not offset the chance of loss from a decline in government bonds.

But grant that prices in the bond market are satisfactory. A banker must then consider whether or not he will be able to keep new notes in circulation for a period worth while. It is comparatively a simple matter for a bank to decide upon its ability to float an issue of bank notes. That can be determined by the nature of its daily receipts and payments. If the customers are calling upon the paying-teller for bills of the right denominations, — say, fives, tens and twenties, — and if the receiving-teller is taking in a large proportion of legal-tender money, or if the payments through one window exceed the receipts at the other, a banker is justified in concluding that the community can be made to absorb an additional quantity of bank notes. But he does not know how large that quantity will be; nor does he know for how long a period the community will have use for the increased supply of money. Now, it is important that a bank issuing notes secured by the deposit of bonds should be able to keep all of its notes in circulation. Notes lying in its own vaults represent capital which, from the banker's point of view, is wasted; for it cannot be made the basis for an expansion of deposits and discounts, since the bank note does not count as reserve. Thus, if a bank has taken out notes to the amount of $100,000 and is able to keep only $50,000 in circulation, it may be losing more than the interest on $50,000. If it had, instead of the notes, the $50,000 or $55,000 which it paid for bonds, its credit business would be capable of an expansion equal to $200,000; for

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a bank with $50,000 in legal-tender money can with safety take care of $200,000 in deposits. Hence, the banker who locks up capital in bonds and takes out notes which he cannot issue, not only runs some risk of loss through changes in the market for government bonds, but renders a portion of his capital entirely unavailable for employment in the most profitable channels open to a bank.

To make this thought clear to readers not familiar with banking operations, let us take the case of a bank which decides to purchase $100,000 of the new two per cent bonds and to issue $100,000 in bank notes. Let the bonds be bought at par. To understand the chances of profit, we must consider what might have been done with the $100,000 legal-tender money, had bonds not been purchased, and what can be done with the $100,000 in bank notes. With the $100,000 legal-tender money, since a reserve of twenty-five per cent is regarded as sufficient for any bank in the country, the bank could increase its loans by at least $400,000, the borrowers opening deposit accounts. At six per cent, the possible profit to be obtained by the fullest use of this $100,000 legal-tender money will be $24,000. Let us look at the other side of the case. If a bank invest the $100,000 legal-tender money in bonds, the $100,000 in bank notes which it receives from the comptroller, not being capable of serving as the basis of deposit credits, at first sight would appear to give the bank a lending power of only $100,000, the return upon which would be $6000. Apparently, therefore, the bank must be a loser by the issue of notes. There is a way, however, to make the note issue the more profitable operation. The notes must be exchanged for legal-tender money, and the public must be an involuntary party to the exchange. The bank's customers must be willing to take bank notes from the paying-teller, while they are turning in legal-tender money at the window of the receiving-teller. If the bank can put this operation through and pay out its $100,000 of bank notes, its store of legal-tender money increases, and so it may gradually expand its loans and deposit credits by four times the amount of notes issued, just as it might have done

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had it not purchased bonds. If this operation is successfully carried through, the bank's net profits from the issue of bank notes amount to the interest on the bonds, less the circulation tax and the cost of the bank notes. But if the bank does not succeed in getting the notes into circulation or in keeping them out, its loss is much more than the difference between two per cent and six per cent on $100,000. Its possible loss, evidently, is the difference between two per cent and twenty-four per cent; for, with the unissued bank notes in its possession, it is incapable of expanding its credit business through loans and discounts, even though the public is calling for such expansion.

This analysis, showing how small are the profits and how great are the possible losses, discloses the real reason for the inelasticity of the national bank-note system. Under normal conditions, it is unwise for a bank to issue more notes than can be kept constantly in circulation. During a time of expansion, when there is increasing demand for money, a prudent banker shrinks from taking out more notes, lest a lull may set in and the notes be returned for redemption. Hence, the total circulation of bank notes at any time never exceeds the amount which, in the opinion of bankers, can be kept afloat throughout the year, in dull times as well as in good times. The level of the bank's circulation, therefore, may be said to be fixed by the minimum demand for money in the country. If it rises above this minimum, the bankers take the risk of a loss much in excess of the possible profit accruing from a temporary increase of circulation. We have here a satisfactory explanation of the statistics of the banking circulation in this country since 1865. Its volume has never increased in response to the increasing needs of the community or fluctuated in accordance with temporary changes in the demand for money. Changes in the circulation have been infrequent and have followed lines entirely unconnected with the monetary demand.

But for two provisions in the National Bank Act, it is possible that the banking circulation would have displayed some elasticity of the right sort. I refer to the provision prohibiting a bank from increasing its issues within six months after it has

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retired any portion of its circulation and to that restricting the total retirement of bank notes to $3,000,000 a month. These two provisions, which were intended to prevent sudden contraction of the currency, would be fatal to the useful operation of the system, even if that were otherwise possible. The first provision, which under any circumstances would make bankers cautious about the curtailment of issues, has probably had little effect upon the total circulation during the last twenty years; for within that period the profits from the issue of bank notes have usually been so small that bankers have given them very little consideration. It is repealed in the act of March 14, but the increased liberty thus given to bankers is likely to be of little avail. The second provision is alone sufficient to render the system ineffective. It is an excellent illustration of the mischief which legislative interference with business is always liable to work. It was intended to prevent a sudden contraction of the currency. But this is a matter which can be safely left in the hands of bankers and business men, since the public will not give up bank notes so long as it has use for them. A harmful contraction of the currency through the retirement of bank notes is impossible. Furthermore, even though the bankers could get possession of the notes when needed by the public, self-interest would prevent a rapid contraction of the currency, for the increasing supply of bonds on the market would lower the price and so furnish a check to the operation. The limit set upon the retirement of notes is ridiculously small. In Canada, whose total money supply is only about four per cent of that of the United States, the banking circulation is left free to correspond to the needs of business and often varies in amount by $3,000,000 a month. In this country it is quite possible that at certain seasons monthly fluctuations equal to $30,000,000 would not exceed the changes in the public demand for a medium of exchange. However, that is a matter which can be determined only by experience: it is not to be fixed by law, any more than is the amount of ice which a city shall consume in the various summer months.

The worst effect of the $3,000,000 restriction is of a kind

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probably not anticipated by the framers of the law. While ostensibly designed to prevent contraction, in reality it prevents expansion to meet any temporary need for an increase in the money supply. It is possible that, if this restriction were removed, the volume of bank notes in this country might at times vary with the needs of different seasons. Yet that is only a possibility. With this restrictive provision left in force, as it is by the law of March 14, the bank-note system drags a ball and chain which renders anything like elasticity impossible. The banks, for example, dare not provide beforehand by the issue of notes for the autumn drafts upon the currency; for, should they do so, the notes would be on their hands through the winter and spring, and part of their capital or loan funds would thus be tied up in a form unavailable for the most profitable use. The law of March 14 moved in the right direction, by its change in the basis of taxation, making it the circulation outstanding instead of the total notes issued to a bank by the comptroller. But another step is necessary before it will be possible to learn from experience whether or not a banking circulation based on bonds can in any measure serve the business interests of a community. The $3,000,000 restriction should be removed. Then, if every possible facility were afforded the banks for the contraction as well as for the expansion of their issues, so that their capital might glide quickly and easily from a two per cent bond investment back into the channels of commerce, there would be some reason for hoping that the system would furnish a useful and elastic, as well as a safe, bank note.

I have dwelt upon the conditions limiting the increase of note issues so long that the reader might infer that dangerous inflation from the bank note need not, in my opinion, be apprehended. This inference is not warranted. It must be borne in mind that a banker takes several circumstances into consideration, when deciding upon the purchase of bonds for the issue of notes. If government bonds, in his opinion, are depressed and are likely to rise in price, he is tempted to make special effort to force more notes into circulation. If, at

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the same time, the money market is dull and he has on hand a surplus of legal-tender money for which he sees no chance of employment as a reserve against an expansion of discounts and deposits, the low prices of government bonds become doubly attractive to him. Bankers were in a situation of this sort in 1895 and 1896. Then they pushed more notes into circulation, and the legal tenders which those notes displaced found their way to New York City, there coöperating with other forces in the operations which resulted in a continual exportation of gold. Such a situation may arise again and the banks may inflate the currency and so help to bring on an export of gold in quantities sufficient to compel the government to sell bonds in order to maintain its reserve. It must be borne in mind that the national bank note possesses a certain legal-tender quality itself. It is receivable at par by all national banks and by the government, and must be accepted by all creditors of the government except bondholders. This enforced receivability of the note gives it a very large field of circulation. It serves as the counter-money of all sorts of financial institutions; and one national bank often pays out the notes of other banks, rather than go to the expense of expressing them to a sub-treasury for redemption. Owing to all these circumstances, it is impossible to determine what the maximum circulation of the national bank note would amount to under the most favorable conditions. We know merely that inflation is possible, at a time when it will be most dangerous. We know, also, that the national bank note, even under the best conditions, fails to be of any service to the community. In the currency of the country it is as useless as a sail on a tugboat, which might in rough weather upset the craft.

JOSEPH FRENCH JOHNSON.

UNIVERSITY OF PENNSYLVANIA.

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WOMEN'S WAGES IN MANUAL WORK.

IN an article which first appeared in the *Economic Journal* for December, 1891, and which has recently been reprinted in *Problems of Modern Industry*, Mr. Sidney Webb presents the results of an investigation made by him concerning the causes of the "alleged differences in the wages paid to men and women for similar work." The facts which the writer had to present were so few in number that no sweeping generalization could be made from them. But, though no definite conclusion could be arrived at, the facts seemed to suggest that, so far as manual work is concerned,

> the frequent inferiority of woman's earnings is due, in the main, to a general but not invariable inferiority of productive power, usually in quantity, sometimes in quality, and nearly always in nett advantageousness to the employer.[1]

This explanation of the lower wages paid to women would, the writer thinks, be even more true in the United States than in England.

> Custom is presumably less powerful in regulating wages in the United States than in England, and in the United States the proportion which the average earnings of women in manufacturing industries bear to those of men is, as we have seen, considerably higher than in this country. Where competition rates of wages prevail, and especially where the women are protected by strong Trade Unions, they often earn wages equal to those of men for equal work.[2]

The suggestion that the lower wages paid to women have at least a partial justification in the inferiority of women's work has received the approval of several eminent economists in both England and America. Professor William Smart,[3] Mr.

[1] Problems of Modern Industry, p. 63.
[2] *Ibid.*, p. 64.
[3] "Women's Wages," in Studies in Economics, pp. 116 ff.

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John A. Hobson[1] and Hon. Carroll D. Wright[2] have all agreed that the inferiority of women's work is a leading cause of the lower wages paid to them. This inferiority, it is said, may show itself in several ways and may itself be due to other causes than natural inability; but, whatever be the explanation, where men and women do the same work, the women "seldom reach man's level in quantity and quality."[3] Until recently this theory of women's wages has lacked adequate confirmation. Mr. Webb acknowledged that the facts cited by him were too few in number to enable definite conclusions to be drawn from them, and none of the later exponents of the theory have furnished us with many additional illustrations.

The importance of the theory is almost self-evident. No one of its supporters has pretended that it is the only explanation of the difference which usually exists between men's and women's wages; and Mr. Webb implies, at least, that in other than manual work this is probably not the chief cause of dissimilarity. Popular opinion has, however, been directly opposed to the views expressed by the above writers; and the general feeling that employers discriminate against women in the payment of wages has found expression in writings on the labor problem, in the reports of labor bureaus and commissions, and even in legislation, to such an extent that it seems worth while to investigate the matter still further, in order to see how far the theory in question can be sustained by statistical evidence.

I.

The Eleventh Annual Report of the Commissioner of Labor (1897), entitled *Work and Wages of Men, Women and Children*, gives us an opportunity of testing by a large number of facts the theory advanced by Mr. Webb, and of observing how far his prediction, that the theory would be found more true for the United States than for England, is realized. The report itself was prepared with a view of making possible a

[1] Evolution of Modern Capitalism, pp. 299–304.
[2] "Why Women are Paid Less Than Men," *Forum*, XIII, 633.
[3] Evolution of Modern Capitalism, p. 302.

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comparison of the wages paid to men, women and children. It furnishes us with a statement of the wages paid to employees in the various establishments;[1] gives the estimates of employers or foremen as to the relative efficiency of the men, women and children employed;[2] furnishes a comparison of the earnings of women and children with those of men, in cases where the efficiency is the same;[3] gives the reasons of employers for hiring women and girls rather than men, and states whether their employment is increasing;[4] and also gives the number of hours of the working week in each establishment.[5]

Like all statistical material, these tables need to be used with great caution; and all conclusions drawn therefrom must be accepted with reservation. The statements of employers and foremen, as to the relative efficiency of their employees and the reasons given for employing females, must be received with some allowance for imperfect knowledge or unintentional errors. The report itself gives the warning[6] that there is reason to believe that differences in the character of the work performed by the men and the women existed in some instances where no distinction was specified by the employer; and we shall later have occasion to note that this difference may pertain to the amount, as well as to the character, of the work performed. It is quite improbable that the real grounds of the preference for female labor are always correctly stated. Many of the reasons given explain nothing. Thus, it is obviously a contradiction to state that men and women are equally efficient in the performance of a certain kind of work, and then to say that the women are "better adapted" for its performance. To state that women are "cheaper" than men is doubtless a sufficient reason for preferring them, if their efficiency is the same; but it does not go far towards explaining why their wages are less. Yet, although the reasons given cannot be regarded as entirely reliable, they may at times save us from attributing an inferiority to women's work when it does not exist.

[1] Table I, pp. 35–513.
[2] Table II, pp. 514–547.
[3] Table III, pp. 548–582.
[4] Table IV, pp. 583–610.
[5] Table VI, pp. 639–645.
[6] P. 26.

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Information as to the relative efficiency of the men and the women could be obtained from only 436 establishments, out of a total of 931 from which other facts given in the report were obtained. But these 436 establishments are pretty well distributed throughout the chief manufacturing states, and represent all the leading industries in which women are employed. The investigation may, therefore, be considered as, on the whole, tolerably complete and satisfactory.

The grades of efficiency of the operatives in these 436 establishments are indicated by an alphabetical classification — A, B, C, D, *etc.*, in which "A" indicates the highest degree of efficiency, "B" the next highest, and so on. Accordingly, if we find men and women performing the same work in the same establishment, and both designated by "A," we know that they are supposed to be equally efficient and to possess this efficiency in the highest degree. If, however, we find men and women performing the same kind of work, but with the men designated by "A," while the women are in grade "B," we know that the women are less efficient workers than the men. This seems to dispose of the question of efficiency, but unfortunately it does not do so in all cases. When we come to discuss the question of piece work, we shall see that the above classification is open to criticism. With these remarks explanatory of the report, we may now turn to a consideration of the facts furnished by the investigation.

II.

The class of occupations known as "domestic and personal service" is represented in the report by forty-four establishments. Eighteen of these report as to the efficiency of the employees, and of these eighteen only six (four laundries and two bakeries) furnish instances of men and women of the same degree of proficiency performing the same kind of work. In the laundries the operatives in question are either ironers, washers or clerks. The average earnings of the fourteen men are 23 per cent higher than those of the twelve female

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employees;[1] in the restaurants, male cooks receive average earnings 24.6 per cent in excess of those paid to females. There is apparently no reason for doubting that the efficiency of the women employees was equal to that of the men in these occupations, except that among the ironers piece wages seem to prevail, although in some instances the men work by piece and the women by time. This makes it probable that in this sub-occupation the women are not equal to the performance of the same amount of work that the men accomplish. It is also to be noted that in one instance, where men and women are engaged as pastry cooks, the hours of work are longer for the men than for the women. The managers of the laundries claim that the women are "better adapted" to perform the work than are the men, although one manager also explains that they are "cheaper." In the restaurants the women are said to be "cheaper," although in one case they are also said to be "better adapted."

In the manufacture of bakery and confectionery goods, only nine establishments out of forty-eight report as to the efficiency of their employees, and only four of these establishments record instances of men and women of equal efficiency performing precisely the same work. There are five instances in these establishments where the average wages of forty women are lower by 10 per cent than are the wages of thirty-one men performing the same work, and one instance where the same average wages are paid to four women shippers as are paid to one man for the same work. It is to be noted, however, that in this case the man's efficiency is of the third grade, represented by "C," while the other male shippers are in grades "A" or "B." All the women shippers are in class "C," and time wages prevail for all employees. One of these factories reports, as its reason for preferring women, that they are "cheaper"; another, that they are "better adapted"; a third, that they are "better adapted, cheaper and work more steadily"; while the fourth does not state the grounds of its preference.

[1] Throughout this paper all of the figures given pertain to adults — male and female workers eighteen or more years of age.

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In the manufacture of paper boxes it would seem that the efficiency and skill of the female operatives should be fully equal to that of the men and that here, if anywhere, the theory of equality of wages for equality of work should show itself. But the facts serve neither to prove nor to disprove the theory. Out of a total of thirty factories represented in the report, only three report as to the efficiency of their employees, and only two of these furnish examples of men and women of equal efficiency performing the same work. In a Minnesota factory we find four male workers receiving average wages of $7.75 per week, while fifteen females possessing "equal efficiency" receive on an average only $5.30½, or 46.1 per cent less than the men. The men work on time, the women on piece, wages. In the other factory, a New York establishment, we find thirteen male workers receiving average wages of $6.68½, while the twenty-three females receive $8.49½, or 27.1 per cent higher than the average paid to men. Both piece and time wages prevail for both sexes, and in both cases the women receive the higher pay. The highest wages paid to the men are $10.87; the lowest, $3.50. The highest wages paid to the women are $13.03; the lowest, $5.00. The Minnesota firm claims that the women are "better adapted and more industrious," while the New York firm merely says that they are "better adapted."

In the manufacture of brooms and brushes, there are four instances in two establishments where sixty-nine men receive wages higher by 55.6 per cent than do the seventy women workers of like efficiency. The difference in wages is inconsiderable in the case of the New York factory, where time wages prevail, but is very great in the Maryland establishment, where both sexes are employed at piece rates.

The boot and shoe industry is one of the largest occupations in which women find employment, and in New England women have been employed in large numbers in this industry since early in the century.[1] The present report gives evidence

[1] As early as 1829, $60,000 were paid out annually to women engaged in the boot and shoe manufacture at Lynn, Massachusetts. — Wright, Wages and Prices, 1752–1880, p. 19.

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concerning twenty-eight establishments, in which 2442 adult males and 1183 females are employed. Only seven of these establishments, however, report as to the efficiency of their employees, and of these only six furnish us data for a comparison of men's and women's wages for the same work performed with supposedly equal efficiency. In the six establishments given there are fifteen instances of this kind. In four instances, sixteen women receive average wages higher by 6.4 per cent than do the nine men performing the same kind of work. In the other eleven instances the men receive higher wages, the difference in their favor being 28.1 per cent. There are forty-nine men and fifty-nine women covered by these eleven instances. The branches of the occupation in which the men receive the higher wages are stitching, finishing, heel-making, skiving, sole-cutting and vamping. The women receive more than the men as stitchers, buttonhole-makers and vampers. Both time and piece wages are paid, but the piece rates are more noticeable in those branches in which women are most largely employed, especially stitching and vamping. The reasons usually given for the employment of women are that they are "better adapted" or "cheaper"; though one establishment, which pays less to the women than to the men, says the women are "neater and more rapid."

In the manufacture of "canned and preserved fruits, vegetables and meats," there are two instances in which seventeen women obtain wages higher by 15.7 per cent than do four men who do the same work with equal efficiency. But there are only three establishments, out of nineteen reporting, which furnish instances of men and women engaged in the same occupations. The instances just given are cases where men are competing with women in what are essentially the women's branches of the industry.

Fifty-six establishments engaged in the manufacture of cigars, tobacco and snuff, are considered in the report. Only twenty-eight of these report as to the relative efficiency of their employees, and of these only thirteen give instances of

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men and women of the same degree of efficiency performing the same work. In the thirteen establishments there are twenty-six such instances. In six cases thirty-five female workers receive average wages higher by 14.3 per cent than do twenty-three male workers engaged at the same tasks. In the other twenty instances, the average wages of the 321 men employed are 20.4 per cent higher than the average wages of the 469 women who are their competitors. The same general superiority of men's wages has been observed by Mr. Webb in the English cigar establishments. He explains it as due to the better quality of cigars made by the men, although he confesses that the superiority of men's work is not so clear here.[1] In the absence of direct proof to the contrary, it would seem that the greater neatness and deftness of the women should give them an advantage in this industry. But it is worthy of note that the majority of cases where the women receive the higher wages are among the lower grades of efficiency, "B" or "C." The statement that men generally receive the higher wages is supported by illustrations from every branch of the tobacco manufacture, while the instances where women receive the higher wages are confined to cigar-makers, carton-makers and strippers. Seven of the thirteen establishments say, as a reason for employing women in preference to men, that the women are more easily controlled; three say that they are less liable to strike; two, that they are more reliable; two, that they are neater; three, that they are better adapted; two, that they are cheaper; two, that they are more rapid; and single instances are given where the women are more industrious, more easily procured, more careful or learn more rapidly than do the male operatives.[2] Of the twenty instances where the men earn more than the women, seventeen are cases where both men and women are employed at piece work; two, where both are paid by time; and one, where the mode of payment is not given. Of the six instances where the women receive the higher wages, two are

[1] *Economic Journal*, I, 639; Problems of Modern Industry, pp. 51, 52.

[2] In some instances more than one reason is given.

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cases of piece work ; one, of time wages ; two, of the combination of the two modes of remuneration for both sexes ; and one, of failure to name the method of remuneration.

The fact that the higher wages are usually paid to men is well illustrated in the manufacture of clothing. In one Missouri establishment engaged in making cloaks, thirteen tailors in grades "A," "B" and "C" receive average wages much in excess of the sixteen tailoresses who are reported as performing the same work with equal efficiency, while seven tailoresses in grade "D" receive slightly higher wages than do three men in the same class. The owner of this establishment reports that the women are "better adapted" for the work and are "more easily controlled" than the men. There is another instance in the clothing industry where women receive the higher pay. Three forewomen and designers for dresses and cloaks receive average weekly wages of $41.66½, while the one man similarly employed receives but $30. The women are said to be "better adapted" ; and one might readily doubt whether in this instance, at least, the work is the same for both sexes. A North Carolina establishment has four men and four women engaged in selling clothing and dry goods. The women are said to be as efficient as the men and to be better adapted to the business ; but they receive on the average only $4.00 per week, while the men receive $11.00. Taking the clothing industry as a whole, so far as represented in this report, we find five instances where the men are paid wages 45.6 per cent higher than those received by women and two instances where the women receive wages 20.3 per cent in excess of those paid to male workers of the same degree of efficiency.

In the printing and publishing business, there are five instances in which women earn more than men, the difference in their favor being on an average 16.4 per cent. There are, furthermore, four instances where their wages are equal to those paid to men ; but, on the other hand, there are twenty instances where the wages of the men exceed those of the women by 26.6 per cent.

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In the manufacture of rubber and elastic goods, the wages of men and women approach somewhat nearer to equality. In five instances the women receive higher wages, the difference in their favor being, however, only 3.8 per cent; and in one instance the same wages are paid to men and women. In only four instances do the men receive higher wages for the same work, the excess amounting to 11.3 per cent. But, since only two industries in this branch of manufactures report as to the efficiency of their employees, no conclusion of wide application is possible.

It is rather startling to find that in the manufacture of tinware and sheet-metal goods the women receive the higher wages, in the only cases where men and women of equal efficiency are found as competitors. But the instances of such competition are only two in number, and these are found in only two establishments out of five investigated. The difference in favor of the women is reported as 7.7 per cent; but an inspection of the figures from which the percentage is drawn shows the difference to be accidental and to be due to that source of so many statistical fallacies, the simple average. Thus, in one of the instances given, seventy-eight men engaged as solderers earn wages ranging from $3.00 to $7.00 per week, the average being $5.09; while thirty women similarly employed have the same upper and lower limits to their wages, but the average in this case is found to be $5.23½. In the other instance one male painter receives $5.00 per week, while four women who receive from $4.50 to $6.00 for the same work earn on an average $5.62½ per week. It is also to be noted that in both these instances the men and women are placed as regards efficiency in the second class, that indicated by "B." Only men are found in the "A" class.

In mercantile pursuits, the fact that men generally receive higher wages than women, even when they perform the same work with apparently the same efficiency, is quite easily demonstrated. In the book and stationery trade there is one instance where one man and three women receive equal wages for equal work, and one instance where the men receive the

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higher wages. In selling general merchandise, insurance and sewing machines, and in miscellaneous trades, the men receive, in all cases of equal efficiency, the higher wages; but only eight instances of such efficiency, scattered throughout the same number of establishments, are given.

In the dry-goods trade there are two instances, in two establishments, where four men and three women receive the same pay for equal work; seven instances, in six establishments, where eighty-six women receive wages 12.5 per cent higher than those paid to eighty-five men; and 111 instances, in seventy-four establishments, where the men's wages are 61 per cent higher than the wages of the women, who are said to be equally efficient. Here, again, we find that it is invariably in the lower grades of efficiency, "B," "C" or "D," that the women receive wages equal to or higher than those paid to men. Practically all the instances where men and women are engaged in performing the same work are among salesmen and saleswomen, and time wages is the only method of payment.

III.

It is the textile industries, however, which afford the best opportunity for testing the theory under discussion, by means of the application of statistics. It is in these industries that women have been longest employed and are still found in the greatest numbers.

In the New England states, the chief center of the textile manufacture, we are confronted with the phenomena of long-established industries; traditional methods of work, and to some extent traditional modes of living; a highly developed system of factory legislation, devised in the interests of the working classes; strong trade unions among the male workers, and in some places organized female labor as well. On the other hand, we have in the cotton manufacture of the Southern states an opportunity to study comparative wages where there is an absence of all those restrictions on competition which characterize the industries of New England. Fortunately, the report with which we are dealing gives us much fuller information con-

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cerning the textile industries, especially the cotton manufacture, than for any other industry or group of industries. The number of factories which have reported as to the relative efficiency of their male and female employees, the number of instances of "equal efficiency" given and the large number of employees of both sexes show that the results of the investigation are not merely accidental. In the cotton industry, for example, the investigation covers eighty-six factories. Sixty-three of these establishments report as to the efficiency of their employees, and fifty-five of them furnish instances of men and women performing the same work with what is said to be equal efficiency. The eight factories which do not furnish such instances are, for the most part, small establishments. The total number of adult males in these eight factories is only sixty and of adult females, fifty-two. In the fifty-five mills which furnish examples of men and women of like degrees of efficiency performing the same work, there are fifty-six instances where the women receive higher wages than do the men. The average wages of these women are 8.6 per cent higher than the corresponding average for men. In 195 instances the men receive average wages 17.6 per cent higher than the wages paid to the women who perform similar work, while in thirty-six instances men and women receive equal wages for equal work. Owing to the importance of this industry and the number of instances of equal efficiency cited, we shall examine these figures somewhat in detail.

In speaking of women's wages in the cotton industry of England, Mr. Webb says:

> Perhaps the clearest case of similar work is that of the Lancashire cotton weavers, where men and women often perform exactly the same work side by side in the same shed, under practically the same Factory Act restrictions. Here the piece-work rates are the same for women as for men, and clever women often get through more work, and thus earn higher weekly wages than some of the men. A similar equality of task wages appears to prevail in cotton-weaving in France.[1]

[1] Problems of Modern Industry, pp. 54, 55.

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Whatever may be the truth concerning the wages of cotton weavers in England and France, the investigation of the Department of Labor does not show that any such equality in the remuneration of men and women exists among American cotton weavers. There are nineteen instances, in ten mills, where 201 female operatives receive the same average wages as do 169 men performing the same work with the same degrees of efficiency. There are, furthermore, twenty-nine instances, in twenty-one mills, where 753 women employed at weaving receive higher wages than do the 585 men who perform the same work with equal efficiency. On the other hand, there are ninety-nine instances, in forty-three factories, where 3015 men receive higher average wages than those paid to 5560 women who do the same work and are said to be equally efficient.

No other branch of the cotton manufacture furnishes so many instances of men and women performing the same work as does the business of weaving. Nearly all the principal sub-occupations—spinning, carding, speeding, warping, *etc.*—furnish examples of equality of wages in a few instances, but in the great majority of cases the inferiority of women's wages is clearly demonstrated. The table on the opposite page shows the terms of competition between men and women, for the cotton manufacture as a whole and for all the leading branches of the industry as well.

It is interesting to notice the geographical distribution of the various cases within the industry where the women receive wages equal to or higher than those paid to men for the same work performed with equal efficiency. As already noted, the cotton factories are situated, for the most part, either in the New England or the South Atlantic states, especially the Carolinas and Georgia. Now, of the thirty-six instances in this industry, where men and women receive equal wages for equal work, thirty-one are in the South and only five are in New England. Of the fifty-six instances in which the women receive higher wages than are paid to men, twenty-four are in New England, twenty-four in the South and eight in the

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COMPARISON OF WAGES OF MEN AND WOMEN IN THE COTTON MANUFACTURE.

Occupation.	Men and Women Receive Equal Wages.				Men Receive Higher Wages.				Women Receive Higher Wages.			
	Factories.	Instances.	Men.	Women.	Factories.	Instances.	Men.	Women.	Factories.	Instances.	Men.	Women.
All branches	20	36	235	238	47	195	3951	7036	29	56	888	1113
Weaving	10	19	169	201	43	99	3015	5560	21	29	585	753
Spinning	1	1	5	8	7	20	82	563	3	3	12	17
Carding	1	2	19	3	7	12	47	52				
Speeding	2	2	5	4	7	10	67	116	4	4	15	32
Warping	2	2	4	2	3	3	8	26	1	1	13	38
Dressing					3	7	78	74				
Doffing	1	1	1	2	2	4	43	52				
Finishing					3	3	40	19				
Twisting					1	1	1	1	2	3	37	15
Beaming									1	2	54	101
Slubbing	1	1	4	1	4	4	34	55	1	1	3	1
All other	7	8	28	17	6	32	536	518	4	13	169	156

Middle and Western states. Of the 195 instances in which the men receive the higher wages, forty-nine are in the South, 135 in New England and eleven in the Middle and Western states. These facts seem to give some support to Mr. Webb's statement that, "where competition rates of wages prevail, and where the women are protected by strong Trade Unions, they often earn wages equal to those of men for equal work."[1] The cotton industry in the South is of recent development, and the high demand for labor has enabled women, as well as men, to secure high wages.[2] Custom is doubtless largely responsible for the lower rate of wages paid to women in New England, where the industry has been long established. In the South both male

[1] *Economic Journal*, I, 649; Problems of Modern Industry, p. 64.

[2] Nominal wages are, of course, lower for both sexes than in the New England states. But the labor cost per spindle is somewhat higher in the South than in Massachusetts. — *Cf. Labor Bulletin* of Massachusetts, No. 5 (January, 1898), p. 5.

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and female labor is unorganized, while in New England the men have the assistance of strong trade unions. In many places the women do not belong to the same unions as the men, and in many others they are entirely unorganized, so that they are less able to enforce a demand for higher wages. It is also to be noticed that, in those instances where men's wages are higher than women's, the difference is much greater in New England than in the South, where it is often insignificant.

The results of the investigation which have thus far been presented do not seem to bear out the conclusion of Messrs. Webb, Smart, Hobson and Wright, that where men and women perform the same work and do it equally well, their wages are usually the same. Among the cotton weavers, where Mr. Webb thinks the conditions of employment are practically the same for both sexes, we find that out of a total of 147 instances, representing 6514 women and 3769 men, in only nineteen instances, or 12.92 per cent of the total number, do men and women receive equal wages. The 201 women represented by these nineteen instances form only 3.08 per cent of the entire number of women weavers. In twenty-nine instances, or 19.73 per cent of the total number, the women earn more than the men; but there are only 753 women included in this class, and these constitute only 11.56 per cent of the total number of women engaged in weaving. In the other ninety-nine instances, comprising 67.34 per cent of the total number, the men earn the higher wages. The women here comprise 85.36 per cent of the total number of women weavers. The other branches of the cotton industry make an even less favorable showing for the women employees, as can readily be seen in the above table.

There is still another way of testing Mr. Webb's theory, that women usually do inferior work and that, where their wages are inferior to men's, it is because their work is inferior. If this were true in the cotton industry, we might expect that those instances where the women earn wages as high as, or higher than, those paid to men would generally occur in the lower grades of efficiency. On the contrary, of the thirty-six

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instances of equal remuneration for men and women, twenty-three are in grade "A"; while of the fifty-six instances where the women receive the higher pay, twenty-six are in class "A" and seventeen in class "B." No final conclusions can be drawn from these facts, but they do not seem to bear out the idea that women's wages in the cotton industry are lower because their work is inferior.

Of the eighty-six industries engaged in the manufacture of cotton goods, included in the investigation, all but eight report the employment of women in the mills to be increasing. The reasons given by superintendents and managers for employing women are, in sixty-six instances, that they are more easily controlled; in seventeen, that they are more reliable; in thirteen, that they are cheaper; in eleven, that they are more industrious; in nine, that they are more rapid; in five, that they are neater; in two, that they are more careful; and in one each, that they are less liable to strike and are cleaner.[1]

The other textile industries present fewer instances of men and women engaged in doing similar work and possessing equal efficiency as workers, but, so far as the facts are given, they reveal the same results as in the cotton industry. In the manufacture of cotton and woolen goods there are, in eight factories, fifteen instances where men earn wages 20.9 per cent higher than do women for the same work, four instances (one among finishers and three among weavers) where the women earn 9.8 per cent higher wages than do the men and one instance, among the weavers, of equality in wages. In the manufacture of hosiery, knit goods and underwear, there are represented eighteen factories in which equal efficiency is recorded. In seven instances the women receive the higher wages, the difference in their favor being 7.7 per cent; but in eighteen instances the wages of the men exceed those of the women by 23.1 per cent. In the manufacture of jute goods there are two instances where men earn more than the women and two instances where their wages are equal. In the silk industry, represented by seven establishments, there are seven-

[1] In some instances more than one of the above reasons are given.

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teen instances of equal efficiency. One of these is among spinners, one among winders and the other fifteen among weavers. In eleven instances the men receive the higher wages, in five instances the higher wages go to the women and in one instance the wages are equal. Where men's wages are higher, the difference is 20.8 per cent; where women's wages are higher, the difference is only 9.4 per cent. In the manufacture of woolen and worsted goods, there are ninety-nine instances where the men earn wages higher by 34.3 per cent than do the women, who are said to be equally efficient. In only ten instances do the women receive the higher wages, and the difference in their favor is slight, only 5.5 per cent. Eight of these instances are among weavers, one among spoolers and one among finishers. Of the thirty instances in the textile industries other than cotton where women's wages equal or exceed the wages paid to men, sixteen are in the highest grade of efficiency and seven in the next highest. The others are scattered through the grades "C," "D" and "E."

IV.

The statistics thus far presented show, for all the leading industries in which manual labor is employed, (1) that men's wages are generally superior to those paid to women, even where the work is the same; (2) that in those instances where the women receive higher wages than the men, the difference in their favor is much less than the difference in favor of the men in those instances in the same industries where the men's wages are higher; (3) that while women's wages are more nearly equal to men's in the textile industries, especially in weaving, even here men's wages are unquestionably superior; (4) that in the great majority of instances within the textile industries, where the women receive wages as high as, or higher than, the men, the competition between the sexes takes place within the higher grades of efficiency, "A" and "B," and, therefore, does not indicate an inferiority in women's work. We must now turn to a consideration of certain facts which may serve to modify the conclusions to which our work has thus far led us.

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Mr. Webb has pointed out that among the Lancashire cotton weavers, where the women apparently earn wages equal to those paid to men, the payment is by piece;[1] and he further states that weaving "appears to be nearly always paid at equal rates, whatever the material or locality."[2] In this country it is not easy to determine conclusively whether the wages of men and women are more nearly equal in occupations where piece wages prevail than in those where time wages are the rule. Time wages predominate in the majority of American industries, and are unquestionably much more commonly employed than in English industries. In certain branches of some industries, however, payment by piece is the rule in the United States, as well as in England, and this is especially true of weaving. Some of the New England cotton mills pay for weaving partly by piece and partly by time, and there are a few instances where the men are paid by time and the women by piece. But among all the eighty-six industries engaged in the cotton manufacture, included in the investigation of the Department of Labor, there is but one, I believe, where weaving is paid for entirely by time.

The question now arises, in cases where men and women are engaged in the performance of similar work and are said to be equally efficient, and where the mode of payment is by piece, whether differences in wages are to be explained by a difference in the rate of payment per piece or by a difference in the quantity produced within a given time. To this question the report itself affords no direct answer. It would certainly seem that any comparison of efficiency should be based on quantitative, as well as qualitative, measurements. The introduction to the statistical tables says that the data as to relative efficiency of employees "represent the best judgment of the best informed officials or foremen of each establishment."[3] Doubt is expressed as to whether the report always distinguishes between the grades of work in an occupation where women and children may be doing lighter work than the male

[1] Problems of Modern Industry, p. 52.
[2] *Ibid.*, p. 54. [3] P. 26.

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employees; but it implies, at least, that in other respects the statements as to relative efficiency may be relied upon.

It now appears that this is not the case, at least so far as piece work is concerned. In answer to an inquiry concerning this point, the Commissioner of Labor remarks that

> it was impossible to take account of piece rates. . . . In the Report "equal efficiency" is a term which applies more to quality of work done than to quantity. The determination of the efficiency of the parties involved in the investigation was, of course, by foremen. I am satisfied that in most cases their idea of efficiency involved quality more than quantity, — that a woman might weave goods just as well and produce just as good a quality in her results as a man, although she might not weave so many yards in a day; hence there would be a variation in the pay, although the piece rates were the same. It has been our experience that wherever men and women work at piece rates, they are paid the same for the same quantity of product, but time worked, quantity, and other reasons might work a variation in the amount paid to each in the aggregate.[1]

From this explanation it would appear that, in cases where men and women receive different compensation for performing the same work, the difference in wages may, after all, be due to a real difference in the amount of work performed — that, in all probability, this is the real explanation for differences in wages in those occupations where piece rates prevail. If this be true, the report gives much greater support to the theories of Messrs. Webb, Hobson, Smart and Wright than seems to be the case from a mere examination of the tables. Of the 781 instances recorded where men and women perform the same work "with the same degrees of efficiency," 217 are instances of payment by piece rates. There are, furthermore, 167 instances where both time and piece wages are paid — in some cases the men being paid by time and the women by piece, in other cases both modes of payment being applied to both sexes. In all these instances where differences in earnings exist, they might be explained, in part at least, by difference in productivity. The following table shows for the entire

[1] Personal letter from Hon. Carroll D. Wright, August 23, 1898.

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group of industries the modes of payment and the relative standing of the men and women as respects their earning capacity.

WAGES AND MODE OF PAYMENT — ALL INDUSTRIES.

RELATIVE WAGES PAID TO MEN AND WOMEN.	TOTAL NUMBER OF INSTANCES OF EQUAL EFFICIENCY.	TIME WAGES.	PIECE WAGES.	TIME AND (OR) PIECE WAGES.	MODE OF PAYMENT NOT GIVEN.
Men earn more than women	595	279	147	133	36
Women earn more than men	129	35	52	31	11
Men and women receive equal wages	57	30	18	3	6
Total	781	344	217	167	53

Dropping out of consideration the fifty-three instances where the mode of payment is not specified, we find that in over half the remaining instances the amount of work performed enters as a cause — perhaps the chief cause — of differences in wages. The number of instances of equal wages is small, almost insignificant, when compared with the number of instances where such equality does not exist. The number of instances where the women earn higher wages than the men is also small, when compared with the instances where the men's earnings are higher; but it is interesting to note that the proportion is higher where women are given an opportunity to earn high wages on the piece-rate plan than it is in the case of time wages. This fact is emphasized by the table on the following page, which shows the modes of payment and the relative earnings of men and women in the seven leading industries in which women are employed.

Returning now to the textile industries and examining the instances of equal efficiency in the business of weaving, in the light of our recent discovery as to piece rates, we find that nearly all of the 242 instances of so-called equal efficiency

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WAGES AND MODE OF PAYMENT — SEVEN LEADING INDUSTRIES.

INDUSTRY.	RELATIVE WAGES PAID TO MEN AND WOMEN.	INSTANCES OF EQUAL EFFICIENCY.	TIME WAGES.	PIECE WAGES.	TIME AND (OR) PIECE WAGES.	MODE OF PAYMENT NOT GIVEN.
Boots and shoes	Men earn more	11	1	1	6	3
	Women earn more	4		3	1	
Cigars, tobacco and snuff	Men earn more	20	2	17		1
	Women earn more	6	1	2	2	1
Cotton and woolen goods	Men earn more	15	1	5	6	3
	Women earn more	4	1	1	1	1
	Wages equal for men and women	1				1
Cotton goods	Men earn more	195	49	59	75	12
	Women earn more	56	9	25	15	7
	Wages equal for men and women	36	14	17	1	4
Silk and silk goods	Men earn more	11		10	1	
	Women earn more	5		4	1	
	Wages equal for men and women	1	1			
Hosiery, knit goods and underwear	Men earn more	18	5	1	8	4
	Women earn more	7		2	3	2
Woolen and worsted goods	Men earn more	99	42	26	23	8
	Women earn more	10	3	7		

must be considered equal only as respects the quality, and not the quantity, of the work. The table on the opposite page indicates a general inferiority of women's work in this branch of the textile manufacture.

Although over one-third of the total number of instances of equal wages paid to men and women which are given in the report are found in this one branch of the textile manufacture, these instances constitute only about 8½ per cent of the total number of instances of "equal efficiency" found in weaving; and if to these we add the further instances where the women

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WAGES AND MODE OF PAYMENT FOR WEAVING.

INDUSTRY.	RELATIVE WAGES PAID TO MEN AND WOMEN.	INSTANCES OF EQUAL EFFICIENCY.	TIME WAGES.	PIECE WAGES.	TIME AND (OR) PIECE WAGES.	MODE OF PAYMENT NOT GIVEN.
All textile industries	Men earn more	177	1	98	66	12
	Women earn more	46	2	30	9	5
	Wages equal for men and women	20		19		1
Bags and bagging	Men earn more	3		3		
	Women earn more					
Carpets	Men earn more	2		2		
	Women earn more	2		2		
Cotton and woolen goods	Men earn more	13		6	5	2
	Women earn more	3		1	1	1
	Wages equal for men and women	1				1
Cotton goods	Men earn more	99		52	39	8
	Women earn more	29		19	7	3
	Wages equal for men and women	19		19		
Silk and silk goods	Men earn more	11	1	7	3	
	Women earn more	4		3	1	
Woolen and worsted goods	Men earn more	49		28	19	2
	Women earn more	8	2	5		1

earn the higher wages, we still have only 27.27 per cent of the total number. In other words, in an occupation in which the women employed outnumber the men and one which is universally regarded as suited to the employment of women, in those cases where the same rates per piece are paid to women as to men, the superiority of men's work is shown by the fact that in nearly three-fourths of the instances cited their wages are higher than those paid to their female competitors. This, like the other facts as to piece wages cited above, certainly

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gives strong support to the opinion that the lower wages of women in manual occupations are the direct result of their lower productivity.

The same conclusions cannot be applied with the same degree of certainty to occupations where time wages prevail, but there are reasons for doubting even here whether the term "equal efficiency" can be made to exclude all differences in the producing power of the men and women. When we turn to Table VI of the report, where the number of working hours per week is given, we find that twenty-two instances, out of the 279 where men earn higher wages than do the women and where both sexes are employed at time wages, can be explained by a difference in the number of hours worked — the women putting in from one and a half to twelve hours less time per week than the men. It is highly probable, if not certain, that this means lower productivity on the part of the women. We have, as a further indication, if not proof, of the inferiority of women's work, the fact that outside of the industries where women are most largely employed and where piece rates prevail, the tendency towards equality of wages, or even higher wages for women, is quite generally found to exist in the lower grades of efficiency. Reference has already been made to this fact in the case of the manufacture of bakery and confectionery goods, in cigar and cigarette manufacturing, in the clothing industry, in the manufacture of tinware and sheet metal goods and in the dry-goods trade. But the same thing is true in the manufacture of bags and bagging, of dress trimmings, of gloves and mittens, of rubber and elastic goods, of watch and clock machinery, and of kindling wood. It is also true of library work and of the book and stationery trade.

In all these industries — although in a few instances women earn wages as high as, or even higher than, the men in the same occupations — the competition takes place in the lower grades of efficiency, while in the upper grades men alone are employed; or, if men are employed along with women, their earnings are higher.

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V.

The American investigation furnishes considerable support to the opinions of the English investigators, that men and women seldom come into direct competition, even when employed in the same establishments. This is naturally the first point to be determined in framing an answer to the question, Why do women receive lower wages than men? If the work performed by men and women is not the same, the inequality of wages may be due, wholly or in part, to the inequalities of employment. The question then becomes, as Professor Smart puts it, "Why are men and women employed in different groups of employment?" [1]

The supporters of the marginal productivity theory of wages naturally look to women's wages for confirmation of their views. Professor Smart, in his treatment of women's wages, clearly has this theory in mind. Since Jevons, says he,

> we have looked for the measure of value in marginal utility; for the value of "production goods" in their marginal utility as instruments of production; and with these for the value of labour in the value of its marginal product, and not in any predetermined fund divided out among a variable number of workers.[2]

Accordingly, he looks to the price of an article, as the first thing to be considered in determining the value of the labor which helped to produce it. Although he rejects the notion that wages are low because goods are cheap, and points out that the initiative in reducing prices comes from producers, he is inclined to think that the explanation for the low wages of women rests in the fact that

> women are in almost exclusive possession of certain branches of trade, and that in these branches the commodities made are recognized by public opinion as being "cheap." Common observation must confirm Mr. Webb's conclusion, that there are certain trades where men do not compete with women; indeed, that there is a

[1] Studies in Economics, p. 122.
[2] *Ibid.*, p. 111.

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well-marked relegation of women workers towards certain ill-paid trades; while at the same time there is as well-marked a movement of men towards the better-paid trades.[1]

As the investigation made by the Department of Labor took place in industries where both men and women were engaged in turning out a given product or series of products, we cannot very well find in it either confirmation or disproof of the statement that women are paid less than men, because they produce "cheap" commodities. If women stitchers and men lasters are employed in the making of the same shoes, we cannot well claim that the women are paid less than the men because their products are less valuable. However, if we can show that women are generally employed as stitchers and men as lasters, we may find a reason, if not a justification, for the lower wages paid to them. It is this view of the situation which the results of the American investigation apparently confirm. A search through Table I of the report, which gives the number of men, women and children employed in each subdivision of the industries investigated, reveals the fact that, outside of the textile manufactures, in the majority of the important industries, men and women are seldom employed in the same sub-occupations. The women's work, therefore, does not come into direct competition with that of men. In the manufacture of bakery and confectionery goods, the number of men and women employed is approximately the same (men, 1664; women, 1142), but in comparatively few instances do they perform the same work. In the manufacture of boots and shoes, the investigation covers twenty-eight factories, employing 2442 men and 1183 women; but the women are for the most part employed as pasters, upper stitchers or vampers — occupations in which men are seldom employed.

The manufacture of cigars, cigarettes, smoking-tobacco and snuff presents an exception to the general rule. There are fifty establishments, employing 3327 men and 2989 women, represented in the report; and in all of the important branches

[1] Studies in Economics, p. 122.

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of the manufacture both sexes seem to be employed. Here we find no direct proof to confirm the opinion, cautiously expressed by Mr. Webb,[1] that the women do inferior work in this industry, although the facts as to piece rates and the prevalence of women in the lower grades of efficiency give indirect support to the notion that their work is less valuable to their employers.

In the textile industries there are more examples than elsewhere of men and women at work in the same branches of the industry; but even here by far the largest number of the women are employed as drawers-in, spinners, speeders, warpers and weavers, while the men absorb the majority of the other branches. In the cotton industry, for example, in the eighty-six establishments included in the report there are fifty-five occupations in which women are reported as employees, but in the majority of these occupations there are only a few women. Women are employed in sixty-five mills as weavers, in sixty as spinners, in fifty-nine as spoolers, in twenty-two as drawers-in, in twenty as speeders, in eleven as slubbing-frame tenders, in ten as doffers, in nine as drawing-frame tenders, in nine as twisters, in nine as winders, in eight as reelers and in five as carders. All other occupations are represented by less than five instances. In the largest establishment represented in this industry, a New Hampshire mill, there are 129 sub-occupations given, in but thirty-one of which women are employed. From this array of evidence one feels almost justified in acknowledging the truth of the strong statement with which Mrs. Webb enforces the more cautious conclusion of her husband.

We are so accustomed in the middle class to see men and women engaged in identical work, as teachers, journalists, authors, painters, sculptors, comedians, singers, musicians, medical practitioners, clerks or what not, that we almost inevitably assume the same state of things to exist in manual labor and manufacturing industry. But this is very far from being the case. To begin with, in over nine-tenths of the industrial field there is no such thing as competition

[1] Problems of Modern Industry, pp. 51, 52.

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between men and women : the men do one thing and the women do another. . . . And even in those industries which employ both men and women, we find them sharply divided in different departments, working at different processes, and performing different operations.[1]

VI.

It is somewhat difficult to summarize the conclusions to be derived from such a variety of considerations and such a multiplicity of facts, but perhaps it may be done in some such manner as the following :

1. In the majority of trades and industrial callings men and women do not compete for the same work to any considerable extent. Exceptions to this rule are found in the textile industries, in the manufacture of tobacco, of boots and shoes, and in the dry-goods trade. In all of these industries men and women are usually found performing the same work, though their competition is often limited to a few branches of the industry. Where they do not perform the same work, it is impossible to say how far differences in remuneration are due to sex and how far to inequality of work.

2. In the leading occupations in which women do compete with men for the same work, payment by piece rates seems to be the rule. In such cases the earnings of women are more often equal to those of men than where time wages are paid. Usually, however, the women are inferior to men in the quantity produced.

3. In occupations where time wages prevail and men and women perform the same work, the lower wages of women can in many instances be explained by a shorter working day for the women than for the men and by the fact that the competition takes place in the lower grades of efficiency. The women workers naturally tend towards these grades, while the higher grades are filled mainly by men. In such cases the women often earn wages as high as, or even higher than, the men do in these lower grades, but they seldom earn as much as men where the competition takes place in the higher grades.

[1] Problems of Modern Industry, p. 94.

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4. Woman's natural disadvantage, due to her lower productivity, is increased by the force of custom. Where competitive rates of wages prevail, as in the textile industries of the South, women's wages are often equal to those of men.

5. In spite of the lower productivity of women, there seems to be a tendency to increase their employment in occupations in which they have been at work, as well as to employ them in new fields of industry. This is partly due to woman's greater tractability. It may also happen that the wages of women are lower, when compared with those of men, than is their productivity. Women's lower standard of living, their partial dependence on other means of support and their lack of combination prevent them from obtaining their true economic wages.

Finally, it must be repeated that these conclusions apply only to manual work. Doubtless they are in a degree applicable also to the higher callings; but here woman's inferiority is usually less, and the influence of custom, of the standard of living and of the irregular and temporary character of her employment is much greater.

M. B. HAMMOND.

UNIVERSITY OF ILLINOIS.

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NEW LIGHT ON SEWARD.[1]

THE appearance of a new life of William H. Seward, written on a large scale by a practiced hand, is an event in American historiography deserving more than the ordinary review; for a fit life of Mr. Seward must be not only an account of the chief happenings in a period of forty years, full of dramatic incident, but also a study of a character fascinating, unpredictable and elusive. Only one civilian of the two decades in which Seward found his greatest opportunities was more significant; none is so hard completely to understand. Furthermore, the period in which the nation woke up to the Civil War and then carried it through is one about which the details already published are endless, so that it grows harder to make a contribution to the body of cogent facts; and at the same time it is a period on which bold and original sketching is necessary, in order to bring out clearly the great figures against the familiar background. Dr. Bancroft has attempted a great and difficult task; but he has worthily performed it, and by his historical handiwork has placed himself among the small body of recognized American historians.

First of all, the book is from beginning to end interesting, not simply because of the vitality, spirit and real greatness of the subject, but because the writer has himself been absorbed in the task, and from chapter to chapter feels, and makes the reader feel, the actuality of the man. When one gets into the book, one forgets both the thousand pages of reading matter and the art of the writer in the fascination of the narrative. The sustained interest is aided by the skillful arrangement and just proportions of the book: half the space is properly given to the eight years of Seward's service as Secretary of State, where we have his ripeness, his fruition and his greatest service.

The charm of the book, aside from the really winning personality which it presents, is in the directness and truthfulness of the style. But Dr. Bancroft has a poniard of his own, which he occasionally sticks into his statesman.

[1] The Life of William H. Seward, with portraits. By Frederic Bancroft. New York and London, Harper & Brothers, 1900. — 2 vols., 553, 576 pp.

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What could be more grandly independent [he says of one of Seward's speeches], and yet so particularly partisan? . . . The practice of being optimistic was steadily cultivated throughout his [Seward's] life, because it was a political resource of great value, as well as a personal comfort. . . . Seward wanted to pass for a staunch defender of anti-slavery acts, and an unyielding opponent of pro-slavery men; yet he thought it strange and felt ill-used when they accepted him at his word and treated him as a genuine enemy. . . . Seward's habit of adapting his arguments to a preconceived conclusion, and his great tenacity of purpose in holding to his declarations, led to some very arbitrary reasoning in his diplomatic correspondence.

These extracts are more than mere turns of expression: they show the purpose of the writer to face the problem as he finds it, and not to explain away obvious and often disagreeable facts. Upon the other hand, he does not look backward through the experience of forty years and hold Seward responsible for conditions which we now vaguely know, but which he could only guess.

A good, honest purpose and an expressive pen help a biographer forward, but do not in themselves give him the title of historian. How far does Bancroft's *Seward* either bring out new facts or throw new light upon facts long known but little comprehended? Here no student of American history can fail to recognize an obligation to the biographer. Two books exist with which this may be most readily compared: Pierce's *Sumner* deals with many of the same incidents, but adds the passionate, tremulous interest of the anti-slavery movement; and Nicolay and Hay's *Lincoln* is rather history than biography. If his predecessors have not left a large field for discovery in printed materials, Dr. Bancroft has nevertheless had several unusual advantages. The correspondence from the family archives at Auburn does not much change accepted views on great issues, but does place the reader singularly within the mind of the men who wrote and received the letters freely quoted. Upon the diplomatic history Dr. Bancroft's special relations with the State Department have given confidence to the rightfully jealous custodians of the archives, and they allow the publication of some materials necessary for a thorough understanding of the diplomacy of the Civil War, including some very important despatches. Dr. Bancroft has also diligently used the printed collections, both public and private, and has unearthed many facts which he has put into their place in the great mosaic. To mention the quarter part of the questions which are here illuminated would be to write another book; yet a few may be mentioned as representative.

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In the first place, no writer has so clearly portrayed the character, influence and connection with Seward's fortunes of Thurlow Weed, whom Bancroft sums up in this sentence: "Weed clearly had the heart of a soldier; he fought without sentiment or fear or — many have always believed — without scruple." This masterly man, first in the line of Republican bosses and in many ways the ablest of them all, at once made and marred Seward's fortunes. He furnished the convenient underground connections which were so serviceable to Seward; but he also roused that protesting minority in which the people of New York have many times taken refuge from the despots of their own creation; and in the crisis of 1860 Weed's probable influence in the White House was one of the main effective arguments against Seward's nomination.

Another service of the book is a series of excellent brief summaries of the political questions other than slavery which divided the Democrats from the Whigs — questions of patronage, internal improvements, immigration and the tariff; and thus is brought out the much neglected truth that in the minds of the people of the United States down to 1844 slavery was in general thought to be a minor question, and people were vastly more interested in and absorbed by the stock economic problems which still engage their thought.

One of the hardest nuts which the writer has undertaken to crack is the real significance of Seward's "Higher Law" speech of 1850. He brings out clearly enough that Seward himself, when he made the speech, seemed unaware of the radical doctrine which it enveloped; and he shows us that the famous phrase, "But there is a higher law than the Constitution, which regulates our authority over the domain, and devotes it to the same noble purposes," does not call for a violation of any statute law. He shows also how inept were the attempts of the slaveholders to make out that the speech was something incendiary and destructive; but, at the same time, it is impossible for the honest biographer not to admit that, whatever Seward meant, he later attempted to nullify it, so that in the end he satisfied nobody and offended both sides.

The familiar "Irrepressible Conflict"-speech of 1858, at Rochester, is shown to contain no principle that had not been repeatedly stated by other men in public; but again appears the disposition of Seward to explain away the force of his own arousing phrases, in his attempt four days after the Rochester speech to persuade his hearers that the slaveholders were a property-holding and moderate class,

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who would easily give way to a little pressure. Anybody who goes over the history of this decade cannot fail to be impressed by the uncertainty of Seward's attitude on the slavery question, although his sympathies were always clear. For some years the manifest reason was his unwillingness to commit the Whig party. But after 1856, when the issue was fairly joined and he had taken his place as a leader of the Republican party, it is hard to understand his lukewarmness on such questions as the Brooks assault, the danger of disunion and the status of Kansas. Some light is thrown on his desire to avoid offense by a curious account of a very non-committal speech, for which Seward helped prepare in advance a detailed newspaper statement of the reception of his words by the Senate. The climax of this period, the convention of 1860, is described in a chapter which contains some inside views of Seward's plans and expectations and bitter disappointment.

The candid reviewer finds little in the book to which he may take exception, although at the beginning of the second volume there is one opportunity to join issue with the account of a great episode. Dr. Bancroft holds that in the crisis of 1860–1861 Seward had a policy of his own — the policy of delay, that it was successful and that it was a great public service. To reproduce the temper of the nation in 1860 and 1861 would be hard enough, even if it could be shown that the nation had a temper of which it was aware; and it is difficult to disprove a "might have been"; but was there any other policy possible to anybody, except delay? Bancroft inclines to think that Buchanan, by doing something decisive, might have prevented secession. Of course the message of December, 1860, backed up by Black's official opinion, which is one of the most remarkable works of imagination in the English language, did give encouragement to secession, because it made it clear that Buchanan would not throw the weight of his official utterances against the movement; but a month later the President's attempt to provision Fort Sumter failed, and showed how futile was military force at that stage of the crisis.

So far from Seward's preventing the spread of secession by throwing dust in the eyes of the Southerners, it was one of his irremediable mistakes that, after his sagacious utterances about the "Irrepressible Conflict," he thought it was in his individual power to repress the conflict by putting a new form of words into the Constitution. As for Seward's independent and leading place, Bancroft has found the printed memorandum (Vol. II, p. 10) sent by Lincoln through

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Thurlow Weed, but he does not bring out the significance of the ascertainable date of that paper — according to Rhodes, December 20. The Committee of Thirteen, in which Seward was Republican spokesman, met on the 24th; and, as Bancroft shows, Seward understood, and so wrote to Lincoln, that his compromise propositions in that committee were substantially covered by Lincoln's memorandum. Is this Seward's independent leadership?

In his speech of January 31, 1861, Seward was apparently willing that some territory should be admitted as slaveholding states — a policy against which Lincoln protested, and effectively protested, from beginning to end. In Congress there was a general belief that, if Seward had his own way, he would accept the Crittenden compromise, which was simply a proposition for the perpetuation of a Union half slave and half free. It is difficult to see that the border-state men relied upon Seward to prevent what they considered aggression; and since Bancroft brings out with perfect distinctness that Weed and the Albany *Evening Journal* were working in understanding with Seward, it is hard to resist the conviction that Seward was ready to yield the Republican basis — no extension of slavery — for the sake of a peace which Lincoln foresaw could not be maintained by any such sacrifice. Undoubtedly Seward believed that he was exercising what he called "a sort of dictatorship of defense"; but no one of his positive suggestions, including that for a constitutional convention, took root; while Lincoln's repeated letters to Seward and to his friends in the House show that his was really the directing mind. Certainly, when in February, 1861, the Seward men attempted to oust Chase from the cabinet slate, they found a strength of resistance of which Seward was to learn more as the months went on. Is it not clear that the South was as anxious as anybody to put off an issue of force till the beginning of the new administration; and that, during the four months of anxiety from the election to the inauguration, all influences were working to bring about the gain of time which Seward thought was his sole property?

Upon the outbreak of the Civil War the *Life* is extremely interesting and vigorous; it impregnably establishes the dominance of Seward's mind over Scott's, and Seward's responsibility for Scott's alarming reports to the Cabinet. It was a time when the clearest-minded saw dimly. Seward's opinion on March 15, that Sumter ought to be evacuated, so as to prevent the secession of the border states and thus to allow a reabsorption of the Confederacy, is quite comparable with Chase's briefer opinion of the same date, in which

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he was ready to let the seceded states go permanently; but Chase recovered insight more speedily than Seward, and he earlier abandoned the delusion that a constitutional convention could or would prepare anything to satisfy and recall the members of the Confederacy. The author himself nowhere more freely or more justly criticises the Secretary than upon the vagueness, the brevity and the uncertainty of Seward's policy, when applied to the actual problems of the crisis.

Seward's long-continued relations with the Confederate commissioners are described in thirty pages, with a clearness and fullness which make this perhaps the best extant account of that episode; and the author's conclusion is irresistible, that Seward believed himself so far the ruling force in the cabinet that, although he would not promise, he thought it safe to predict that the fort would be speedily given up. No previous writer has so completely accounted for Seward's desperate remedies, when he found himself overruled. He first tried the extraordinary "Thoughts for the President's Consideration," submitted April 1, 1861, in which he proposed war with most of the European nations upon no particular grounds and offered himself as the director of the enterprise. When that failed, he made a most determined attempt to change the issue from Fort Sumter to Fort Pickens, because he had not so deeply committed himself to Alabama as to South Carolina. Steadily, clearly, soberly, overwhelmingly, the workings of Seward's mind are laid bare, and we understand the two supreme illusions which led him to assume powers which he did not possess: the first was, in Bancroft's words, that "the Southerners had stronger ties to the federal government than to slavery"; the second was that "he alone could furnish and direct the policy . . . by which the country was to be saved."

The chapters upon Seward's diplomacy are the most important and perhaps the most revealing part of the book; for it is upon his experience in the State Department that Seward's reputation as a constructive statesman must depend. He had many of the qualities of a diplomat — good temper, resolution, finesse and a high sense of national dignity. A hitherto overlooked incident, illustrating his diplomatic skill, is the reception which he accorded to the French and British ministers, when they appeared together, June 15, 1861, to make a joint representation on neutrality. "No, no," said the Secretary, "this will never do. I cannot see you in that way. We must start right about it, whatever it is. M. Mercier,

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will you do me the favor to come to dine with me this evening? And if Lord Lyons will step into my room with me now, we will discuss what he has to say to me."

Although Seward had been for years on the Senate committee on foreign affairs, he had little knowledge of diplomatic affairs. It would have been a service, if Dr. Bancroft had made plainer who was the official who kept up the traditions of diplomatic usage and who furnished the principles of international law which the Secretary elaborated in his prolix despatches. On a succession of fundamental questions, Seward's international law was lame from the start. The recognition of the belligerency of the Confederacy by England and France came several weeks after the blockade proclamation, which could be nothing else than a recognition of belligerency by the United States; yet the action of the two powers seemed to Seward not only unnecessary but hostile; and as late as his negotiations on the Alabama claims after the war, he was still inclined to demand damages upon that ground.

The Trent affair is treated in a skillful chapter, in which the whole issue is very distinctly stated. An important point is the proof that Seward had received — and presumably read — the warning despatches of Adams, Dayton and Bigelow, and the urgent reports of Thurlow Weed. Like Rhodes, Dr. Bancroft makes clear that there was no threat by Lord Lyons to withdraw from Washington, if no satisfaction were had in seven days. To Seward Bancroft gives the whole credit of yielding up the prisoners and the whole discredit of delaying that action until public sentiment had become inflamed; and he comes near making out a case for his contention that Seward finally decided to yield and, with Blair's assistance, carried with him all the other members of the cabinet and the President.

Nevertheless, is not the key to the whole transaction Lincoln's sententious remark, "One war at a time"? Certainly there never was a necessary though disagreeable act based on less tenable grounds. Seward accomplished the diplomatic feat of giving up the object of the contention, on grounds of international law, while maintaining that international law had justified the seizure. In truth, Seward's despatch was intended for home consumption. How grudgingly the decision was received by the public is shown in Richard H. Dana's criticism, quoted in Charles Francis Adams's *Life*: "Mr. Seward is not only right but sublime. It was a little too sublime, dephlegmated and defecated for common mortals, but I bow to it as to a superior intelligence."

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An interesting chapter is given up to Seward's arrest and dete
of political prisoners, which should be read in connectio
Rhodes's treatment of the same unlovely subject. Relentle
point to point and from typical case to typical case, S
pursued; and it is shown that many of the arrests were wi
foundation or examination by reasonable or dispassionate n
"no one of the political prisoners was brought to trial — a rule
they were not even told why they were arrested"; that no evidence
was collected; that the prisons became crowded, and eventually men
were set free only when they could put political pressure upon the
Secretary of State. Considering Seward's training as a lawyer, as
an apostle of freedom, as an advocate of the principles of American
liberty, these arbitrary arrests, outside the proper province of the
State Department, show not so much a love of power as a dangerous
belief that the safety of the republic depended upon his uninformed
judgments. The fact that many of these arrests were necessary and
unavoidable in time of war does not, in Dr. Bancroft's judgment or
in that of any candid reader, free Seward or Lincoln from the charge
of a great invasion of the principles of human liberty.

For the deep intricacies of the European relations of 1862 and
1863 we must wait for Mr. Charles Francis Adams's larger life of his
father; for Bancroft makes clear that, though Seward directed and
suggested, he did not and could not comprehend all the dangers of
our course in Europe; and he wisely left details to able, faithful and
untiring ministers. He felt it to be his function to supply an unfail-
ing stream of cheerful predictions, to minimize the dangers of the
Union, to keep up courage after defeat. Doubtless Adams and
Dayton and Bigelow discounted the optimistic despatches which
tumbled from their mail bags, but Dr. Bancroft points out that many
of these despatches were intended, not for the ambassadors, but for
the American press; that the bold words and irresistible conclusions
were, after all, not addressed to foreign governments, but to the
people of the United States; that Seward was really heartening his
own countrymen.

Space fails for a summary of the absorbing pages on blockade
running and the Confederate war vessels; nor can we deal as it
deserves with the masterly chapter in which the whole question of
intervention in Mexico is discussed in twenty-five pages, while the
rising note of warning reveals the Secretary's growing confidence.
Perhaps no other writer has so clearly brought out the danger that
the boys in blue would march across the Mexican border. Grant

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Schofield a leave of absence to organize in Mexican territory
ıy corps of former Confederate and Union soldiers; and
skillfully dismembered this plan, by sending Schofield to
'is principal instructions were: "I want you to get your
r Napoleon's mahogany and tell him he must get out of
— a message which was probably conveyed in stronger and
mc ·c· cacious terms through the ordinary channels of diplomatic intercourse.

The *Life of Seward* is too closely knit to be fitly characterized by extracts. The impression left upon the mind by the book is, however, easily stated. In general, its effect is to raise Seward in the estimation of his countrymen. One suspects that in the earlier stages of his long task the author grew weary of Seward's protracted speeches and his rambling despatches, that he felt a sense of restiveness, that he scented self-seeking and love of applause in all that Seward did; but that, as the work went on, as he filled in his background, the figure stood out more and more clearly as that of a real man, a genuine American, inspired by high ideals.

One severe characterization is likely to live as long as Seward's reputation. After pointing out Seward's intense friendship for Thurlow Weed and also for John Quincy Adams, Dr. Bancroft says:

In fact, he was a combination of some of the most striking characteristics of each man. Hence he was not less eager to inherit the mantle of the one than to be the beneficiary of the schemes and power of the other. So, until he laid aside his ambition for preferment many years later, he was like Daudet's hero, who heard two voices: —

Tartarin-Quichotte, très exalté:
Couvre-toi de gloire, Tartarin.
Tartarin-Sancho, très calme:
Tartarin, couvre-toi de flanelle.

Seward always showed a preference for getting first the covering of *flanelle*, knowing that *gloire* fits best on the outside. Carlyle said of Voltaire: "He loved truth, but chiefly of the triumphant sort." Seward desired to be true to Adams's example, but he thought it necessary to keep Weed as a guide and ally in the struggle.

Elsewhere Bancroft pays his respects a second time to the two voices:

It was John Quincy Adams Seward that uttered the telling phrases and made the severe arraignments and was the hope of the radicals like Gerrit Smith, Theodore Parker and, at times, of the Garrisonians. He usually

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favored what was boldest and most extreme if it stopped short of violence. On the other hand, Thurlow Weed Seward kept in close relations with the party organization; he watched the plans of the politicians, changed the program to suit conditions, and tried to win all classes of men. Adams Seward was ardently anti-slavery and expected to live in history as a great philanthropist. Weed Seward was determined to control the patronage and to live in the White House.

In these telling antitheses it is not the purpose of the biographer to set forth Seward as "a double-minded man, unstable in all his ways." He sees in Seward, and makes us see, a man of naturally high, genuine and impulsive character, though occasionally brought down to earth, like a bird with a lure; he sees also a man who has entire confidence in his own methods, who is not given to self-analysis, to whom

> To doubt would be disloyalty,
> To falter would be sin.

Perhaps it will not be too much to say that the characteristic of Seward's whole public life was youth. He had the hopes, the ambitions, the convictions, the expectations of a young man; hence he easily reacted from the severe disappointments of 1856, 1860 and 1861. He was a man who loved to lead and who loved to be well thought of, but one who could nevertheless accept the leadership of another and who could even endure the pangs of unpopularity throughout all his later life. He had that best of moderating forces — the support of an intellectual, devoted and clear-sighted wife. Over and over again we find Mrs. Seward disagreeing, supplying moral fibre, gently chiding; with her, John Quincy Adams Seward was in full accord.

In his earlier political life Seward was really out of his proper setting. He was a democrat, a radical, a reformer, an expansionist, an appealer to the will of the people. His Whiggism was also of the hearty, generous, broad type of his patron, John Quincy Adams. He naturally fell in with the wider, more humane principles of the Republican party.

The great question as to Seward's whole career is: Was he sincere? Did he ring true? Dr. Bancroft is obliged to point to many places where he was not consistent: in his attitude on the Clayton-Bulwer Treaty, in his attempts to explain away the "Higher Law," in his significant hesitations on the slavery question from 1852 to 1858, in many of his despatches on intervention and recognition. Yet, to a large degree, Seward seems to have been unconscious that he took

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different ground on the same question at various times: his mind was quick, and he had the lawyer's habit of marking differences of conditions which might take away the force of cases cited against him; Seward so loved to be thought a frank, open, direct and candid man that in his own mind he always deserved that reputation.

The greatest criticism upon Seward is his own remarkable suggestions sent to President Lincoln, April 1, 1861. Ever since the publication of that document by Nicolay and Hay, writers on the period have pointed the moral. Bancroft is, however, the first to show a practical reason for Seward's attitude: he alone has discovered how much Seward had become involved by his own belief in a pacific settlement and by his own hope to bring about that settlement unaided. The fault was a great one; the atonement is equally great, for Lincoln's concise, considerate answer changed the chieftain into a loyal ancient. From the Sumter expedition to Lincoln's death, it does not appear that Seward ever hampered or disturbed the President by separate adventures, by carping criticism or by half-hearted service. In fact, Lincoln thoroughly liked and enjoyed him, and enjoyed those floating stories about Seward's forgetfulness which the biographer has left out of his book. In earnestness, in perception of the real nature of the slavery contest, in the moral indignation which nerved the nation to its great task, a lesser man than his great rival Chase, Seward was the better friend to Lincoln and the better aid. His international law might be faulty, his despatches might loose the eagle's screams, but he did direct his great abilities with a single heart toward his important task. He deserves to go down to history with the tribute paid in the last words of the second volume:

> For eight years he had safely piloted the government past every foreign danger, and had left the United States in a much better condition in regard to all other nations than when he came into office.

ALBERT BUSHNELL HART.

HARVARD UNIVERSITY.

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REVIEWS.

Monopolies and Trusts. By RICHARD T. ELY. New York, The Macmillan Company, 1900. — 273 pp.

Trusts and the Public. By GEORGE GUNTON. New York, D. Appleton & Co., 1899. — 245 pp.

Industrial Commission: Preliminary Report on Trusts and Industrial Combinations. Part I. Washington, Government Printing Office, 1900. — 264 pp.

Almost any book dealing with the question of monopolies and trusts is welcome at the present time. Nevertheless, in order that a book may be effective, the author should have come to clear opinions on the following points: (1) Is monopoly under present industrial conditions really able in the long run to destroy competition? (2) To what extent, and for how long a time, can the so-called monopolist rob the consumer by charging him a higher price than competition would give him? (3) Can we regulate monopolies and trusts so as to preserve the advantages of production on a large scale, while protecting the community against extortion?

Judged by these tests, Professor Ely's book is interesting and full of information, moderate in tone and impartial in attitude. He does not, however, reach clear and decisive judgments; and the book is weakened, not to say disfigured, by the constant intrusion of references to his own position in economic literature. From the same standpoint, Mr. Gunton's book seems to me almost worthless; while the official report is a really serious contribution to the solution of the first two questions.

To return to Professor Ely's work. The author attempts to solve the first question by precision of definition — an excellent expedient in the hands of a master, but requiring the greatest skill and acumen.

> Monopoly means [says he] that substantial unity of action on the part of one or more persons engaged in some kind of business which gives exclusive control, more particularly, although not solely, with regard to price.

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Professor Ely thinks he reaches precision by this definition, but its practical content does not seem to carry us very far, owing to the lack of limitations in regard to time and space. "Substantial unity of action on the part of one person engaged in some kind of business," if it mean anything, means that a seller seeks his own interest or what he regards as his own interest. In a narrow market and for a limited time such seller may control prices. Moreover, there is constantly occurring substantial unity of action on the part of several persons in a small market and for short periods of time, owing to custom, tradition, inertia on the part of buyers, *etc.*, which results in control of prices. In other words, we have monopoly everywhere and constantly. A definition admitting such deductions seems to be too wide to correspond to the "more [*sic*] ordinary" use of the word, which is one of the ends that Professor Ely is seeking. On the other hand, complete monopoly, regardless of limitations of space and time, does not seem to be possible (as is shown all through the book) except by legal enactment, and even then we have the power of substitution as a limiting force. A definition demanding such an interpretation would be much too narrow to correspond to the "more ordinary" use of the term. We cannot see, therefore, that the mere definition for which the author claims originality and priority of discovery is any great advance over the ordinary dictum of economists that monopoly means absence of competition.

With practical good sense, however, Professor Ely enunciates his definition only in order to abandon it in the following words:

> We must anticipate our classification of monopoly sufficiently to state that we have partial monopolies as well as complete monopolies, as this statement adds to the fulness [?] of our idea of the term.
>
> We have a partial monopoly when there is a unified control over a considerable portion of the industrial field, but not over a sufficient portion to give complete domination of the whole field [p. 31].

This certainly adds to the extension of the term; but does it not destroy the precision which Professor Ely was seeking and which he claims to have discovered in distinction from all previous writers? Has he really reached any definition at all? Or is he not merely saying that competition is more or less imperfect, or that competitors are more or less unequal in strength?

On the basis of the narrower content of his definition, however, Professor Ely makes some deductions which are calculated to enlighten the public mind greatly at this time. For instance, he

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declares that differential gains due to natural ability or appropriated natural opportunities are not monopolized gains, because there is still competition: mere limitation of supply does not yield monopoly.

> Nor may we say that a valuable thing is monopolized because its supply is limited and also graded in quality. . . . Land is not a monopoly, and it is misleading to speak of it as a natural monopoly. Nowhere do we find monopoly either in the ownership or in the cultivation of land, but everywhere competition, competition among unequals, but still competition.

And again:

> We must distinguish between the broad concept of differential gains enjoyed by those in competitive pursuits, and the monopolistic gains based on the absence of competition.

Just as sharply must we distinguish between competitive businesses of large magnitude and monopolies. "Department stores in no city in the world enjoy monopolies, but are subjected to the steady, permanent pressure of competition." Mere combination, again, is not necessarily monopoly; for there may still be active competition. Finally, although the fact that an article may have a substitute does not prevent its being monopolized, nevertheless the presence of the substitute may act, and does generally act, as a limit to monopoly price. These considerations seem calculated to dissipate many popular fears as to the prevalence and progress of monopoly.

Professor Ely contributes nothing to the theory of monopoly price — namely, that the monopolist will charge the price which yields the largest net revenue. This will generally be above the price indicated by the equilibrium of demand and supply. That is, the monopolist will not fix the price at that point which will satisfy the greatest demand and yield him the ordinary profit above his cost of production; but will prefer to sell a less quantity at a higher price and gain a greater total net revenue. The former is sometimes said to be the competitive price, and hence the monopolist is said to charge more than the competitive price. Professor Marshall has, however, pointed out that the monopoly price, where production is concentrated, may be less than a competitive price where the business is split up into small enterprises. This and other limitations of monopoly price adduced by Marshall do not seem to me to have been sufficiently noticed by Professor Ely. On the other hand, he emphasizes the fact (now generally attracting notice[1]) that a monopolist may charge different prices to different customers and may use the

[1] See J. B. Clark, "Trusts," POLITICAL SCIENCE QUARTERLY, June, 1900.

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large gains reaped in one portion of the field to lower prices and crush out rivals elsewhere.

In regard to remedies, Professor Ely seems inclined to public ownership and governmental management of natural monopolies. He recommends tariff reform, patent reform, taxation of bequests and inheritances in order to break up large fortunes, and the reform of the law of corporations. But in the field of competition there should be "allowed free play of natural and social forces" (p. 272). Here, as elsewhere, we come back to the fundamental difficulty of determining where competition ceases and monopoly begins.

Mr. Gunton's book is a collection of essays which have appeared principally in his own magazine during the last few years. They are very popular in character and smack decidedly of the fleeting editorial. The whole has little consecutiveness and no exhaustiveness. The most valuable of the essays is still the one on the "Economic and Social Aspects of Trusts," which appeared originally in the POLITICAL SCIENCE QUARTERLY as far back as 1888. The rapid march of events since then does not seem to have shaken Mr. Gunton's position, which may rightly be described as *pro-trust.*

It is a relief to turn from these discursive books on monopolies and trusts to the compact presentation of facts contained in the "Preliminary Report" of the Industrial Commission. It is objective in character, consisting primarily of a review of the evidence presented to the commission and a digest of the same. The commission finds that there is over-capitalization in many cases, but it does not seem to regard this as a very great evil. Several of the combinations control from seventy-five to ninety per cent of the entire output in their industry, which must give them a controlling influence over prices. The evil of cuts in local markets for the purpose of ruining competitors is clearly pointed out. The so-called factor-system is described, but a defense even of it is admitted. Freight discriminations are condemned, but allegations of this nature are carefully examined and in many cases discredited. Even the effects of combinations on laborers seem to be reduced to a diminution in the number of agents and higher officers. No remedies are specifically prepared by the commission, but they enumerate those prepared by various witnesses. Prominent among these are publicity and federal incorporation or stricter regulation of corporations.

The most valuable part of the report is the statistical study of prices by Professor Jenks. He presents carefully prepared tables and charts of the prices of sugar, whiskey, petroleum, tin plate, and

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steel and wire. He compares the cost of the raw material with that of the finished product in each case, the difference showing the cost of manufacture plus profit. The inference is that, when the margin between cost of raw material and selling price of finished product rises, profit increases. The figures seem to show in general that during periods of trust control the margin increases. This is not surprising; for the object of a trust or combination is to make profit, and periods of trust control often succeed periods of ruinous competition, when the margin has been so low as to wipe out all profit. In some cases it even appears that trusts are learning the wisdom of keeping prices reasonable, in order to discourage rivalry. This is the most hopeful sign in the present situation.

RICHMOND MAYO-SMITH.

The Distribution of Income. By WILLIAM SMART. New York, The Macmillan Company, 1899. — 341 pp.

This work affords an eminently sane and modern view of the distribution of the annual product of social industry. By reason of the clearness and the attractiveness of its style it will reach many readers and will perform the large service of extending and deepening the conviction that, whatever imperfections may exist in the process by which the social income is shared, there is a sound principle at the bottom of it. Incomes come from products, and are gauged, in amount, by the specific products of the agents that get them. We put something into a pool and draw something out of the pool, and nature does not regularly cheat us in the operation. There are employers who would gladly retain more than they do, but are not, in this respect, their own masters. They must engage in a neck-and-neck race of improvement, and they must be forever surrendering to others the lion's share of fruits. The mobility of the agents, labor and capital, causes a general diffusing of the gains that come to each agent in its entirety, so that no one class of laborers, for example, is favored greatly at the cost of others; and by means of an all-around improvement in the facilities for production and an accumulation of capital, all workers tend more and more to union. Trade unionism involves some disturbances, but does not annul the action of natural law; and the sound parts of the trade-union policy — those which make for the well-being of society — are the parts that, in an intelligent laborer's view, are beneficial to labor itself.

Among the striking minor features of the book is its representation

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of the economic process as a circular flow of wealth through a series of concrete forms and through man himself. We produce, by putting matter through a series of transformations that reduce it, first to one form, then to another, and again to another; and ultimately we seemingly reduce it all to man. We cause it to exhaust itself in ministering to consumers; but this has an enabling effect on man as a worker, and makes it possible for him to put forth new energy. The wealth that exhausts itself in feeding him reappears from the effect of his work, much as the water of a river that has merged itself into the sea goes, through the agency of the sun and the atmosphere, back into the river again. There is, as we may note, an imperfection in the continuity of this flow of wealth; for by no means all the consumed goods are enabling agents and causes of a further creation of wealth. The prospect of future consumption is all a lure to present labor; but the present consumption is by no means all a cause of future labor. Teleologically, wealth is always a means and something subjective is an ultimate end. Within safe limits, however, the view of the perpetual flow of wealth and its unending return to its old channel is a useful one.

On pages 122 and 123 the author reasserts a view which he published earlier, that a *general* fall of prices could not be due to improvements in production unless

> demand were to remain a constant quantity. . . . But as the population of the world is increasing fast, as its wealth and the exchanges of that wealth are increasing faster, and as entire nations are rising faster still from barbarism into exchanging communities, it is impossible that the increase of our precious metal money can be as great as the increase in the work that is being put upon it.

Evidently the earlier of these statements must be received with caution, and in the sense that the author wishes to have attached to it, rather than in the sense that the words themselves are able to convey; for it is improvements in production that are causing the increase in wealth to outstrip the growth of population, and it is a comprehensive improvement in the power of production that is translating savage nations to a higher economic plane. It is the failure to enlarge the stock of money in a way that would neutralize the effects of progress in other production that creates the effect of a scarcity of money. Methods of production have, therefore, a cardinal influence, even on general prices, though much of this influence is indirectly exerted.

JOHN B. CLARK.

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Bimetallism: A summary and examination of the arguments for and against a bimetallic system of currency. By MAJOR LEONARD DARWIN. New York, Appleton & Co., 1898. — 341 pp.

This volume is a systematic and sustained effort to explain the bimetallic question. The author declares at the outset his intention to deal, not so much with the facts, as "with the *principles* which should be present in the minds of those who are desirous of considering the facts" (p. 5). Actual fluctuations in the values and ratios of the precious metals find here, therefore, no systematic description or analysis; nor are the effects of such fluctuations upon industry and commerce traced with detail in any particular cases. The book is almost unique among works of its kind in thus presenting the "pure theory," so to speak, of the arguments for and against bimetallism.

There is an utter absence of partisanship and controversial intentions on the part of the author. No writer on these matters has evinced a more unmistakable desire to see and present both sides of every mooted question. Though favoring international bimetallism at a ratio near that of the market, Mr. Darwin is nevertheless candid enough to admit, after his elaborate examination of the *pros* and *cons*, that "the choice between bimetallism and monometallism is not free from doubt" (p. 336) and that the arguments "are in many respects evenly balanced" (p. 335).

Among bimetallist writers Mr. Darwin stands almost, if not quite, alone in insisting that the question of the ratio is vital and must be considered first of all. The late President Walker used to urge that this matter of the ratio was of relative unimportance, and ought not to be discussed until the decision to reëstablish bimetallism had been made. Mr. Darwin is of the very opposite opinion, for he believes that one's adhesion to the bimetallic cause must needs be contingent upon the decision as to the ratio. He shows that many of the arguments brought forward for or against the system apply only to bimetallism at a particular ratio, referring particularly to the inflationist arguments; and he points out that, if bimetallism at the market ratio were adopted, the artificial stimulation of prices, which many seek and others abhor, would never take place. Unlike President Walker, who regarded "all talk about taking the existing ratio of the market, say 30 to 1," as "simply silly" (*International Bimetallism*, p. 213), Mr. Darwin really advocates the selection of some such ratio, on the ground that it would produce the least possible disturbance to prices and trade. Reviewing the arguments advanced for a lower ratio, he says that "the difficulty which the

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Government of India would experience in adopting a ratio higher than 25 to 1 is the only one of these considerations which ought, as it appears to me, to carry much weight" (p. 335. *Cf.* p. 72).

Careful consideration is given to the question whether an ideal standard would always measure the same quantity of goods (commodity standard) or the product of the same amount of labor (labor standard) — whether, in other words, it is desirable that average prices should remain constant and the value of money stable, or that both should fluctuate in conformity with changes in the effectiveness of labor. Mr. Darwin shows that with the labor standard the wage-earners, producers and receivers of fixed payments would share in the same proportion in the advantages arising from an increase in production; and he concludes that this standard is the better, therefore, from the point of view of distribution. On the other hand, with the commodity standard the whole gain from an increase in productive power would go at first into the pockets of producers, and would have the effect of stimulating trade. It is, therefore, preferable from the standpoint of production. "A standard occupying an intermediate position between the labor standard and the commodity standard would appear on the whole to be the best" (p. 242); and Mr. Darwin makes it clear that "undesirable results will arise if the standard varies beyond these limits" (p. 244). He believes "that silver, as a standard of value, has behaved, until the last year or two, approximately like the commodity standard," and "that gold has behaved somewhat like the labor standard"; and he concludes that, "had the two metals been tied together by market-ratio bimetallism in 1873, a standard in accordance with theoretical requirements . . . would have been adopted" (pp. 275, 276).

The book, though written with evident care, is naturally not beyond criticism in many places. Take, for example, Mr. Darwin's discussion of the quantity theory. He tells us that "the real question underlying these doubts as to the truth of the quantitative theory of prices is whether, *at any one time*, there is or is not a definite quantitative relationship between the amount of coin in circulation and the total money value of the business being transacted by aid of the currency in question" (p. 186). We should have supposed, on the contrary, that the crucial question was not, whether there is such a quantitative relationship at any one time — which of course there is — but whether there is any tendency for the relationship to be the same *at different times*.

Nor can we follow all that Mr. Darwin has to say about the effect

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of credit upon prices. This is the case, for instance, when he asserts that an increase of business accomplished by purely fiduciary arrangements "will have no direct effect on the value of the standard, or on average prices measured thereby" (p. 191). Given a particular community with a certain amount of goods to be exchanged, we cannot evade the conclusion that the prices to be paid will be conditioned by the total means of payment available, whether those means be specie, notes or complete substitutes for money. Increase the latter and prices will inevitably rise, and the values of the coins will as certainly fall. It is doubtless true, as Mr. Darwin says, that "however much credit may swell or contract . . . the sovereign will be worth no more and no less than the value of the gold in the sovereign" (pp. 202, 203); but it is equally true, although he does not say so, that the value of the gold in the sovereign will depend in its turn very largely upon the extent to which the demand for gold is relieved by the use of substitutes — that is to say, upon the volume of credit.

Two statements with regard to the United States also challenge criticism. The first is the assertion that, "had no changes in monetary laws been made in 1873 and in subsequent years, the currency of the United States would now be bimetallic" (p. 84). If this refers merely to the changes in legislation which occurred in this country during those years, the proposition plainly cannot meet with acceptance. It will be replied that without the laws of 1873 and 1874 we should have long since passed to monometallism in the form of a single silver standard. The other statement about the United States, to which few will be inclined to accede, concerns the reasons why bank reserves have increased. "This accumulation of gold is kept in the banking reserves for a definite purpose," Mr. Darwin says. "With regard to America, what it means beyond a shadow of a doubt is that the supply of gold is so abundant that the character and safety of the note circulation have been improved in a signal manner" (p. 201). But the notes of our national banks are secured, of course, not by the bank reserves, but by the pledge of the United States government to redeem them. An increase in the cash holdings of the banks, therefore, would not really make the notes any more secure than they were, and the banking reserve ought rather to be looked upon as the basis for the extension of credit in the form of deposit accounts.

Among a number of typographical blemishes, the following are perhaps worthy of remark. On line 2 of page 254 the word *de*preciating

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ought to read *ap*preciating; on line 15 of page 288 the phrase "silver in 20 rupees" ought to read "silver in 10 rupees."

All things considered, Mr. Darwin's book, despite its incidental errors and omissions, presents a treatment of the money question as impartial, as thorough, as suggestive and stimulating as any that has appeared in many years.

A. P. ANDREW.

HARVARD UNIVERSITY.

Griechische Ostraka aus Aegypten und Nubien. Ein Beitrag zur antiken Wirthschaftsgeschichte. Von DR. ULRICH WILCKEN. Leipzig, von Giesecke & Devrient, 1899. — 2 vols.: 860, 497 pp.

Although most educated people are acquainted with the history of Athenian ostracism, few have an adequate conception of the important part played in the life of antiquity by the *ostrakon*, or potsherd, the ordinary cheap writing material of the day. For many decades increasing numbers of such fragments have been exhumed in the valley of the Nile; and it occurred to Dr. Ulrich Wilcken to attempt to reconstruct a part of ancient economic history from this source. Most of the potsherds used in these volumes are tax receipts, with a small sprinkling of bank receipts. So numerous are they that Professor Wilcken has been able to give a much fuller account of the Egyptian tax system than it was possible for Mr. Grenfell to do, when he edited the *Revenue Laws of Ptolemy Philadelphus* from a recently discovered papyrus.

The important chapter of Professor Wilcken's book is the one in which he discusses in detail the various kinds of taxes. To our astonishment, he finds no less than two hundred and eighteen varieties, only a few of which cannot be explained by him. In commenting upon their fiscal significance, he acknowledges his indebtedness to the assistance of his colleagues in economics and finance at the University of Breslau. The results of this assistance can readily be seen in the classification which he adopts. We find under the head of "fees" two different categories. The direct taxes are classified as follows: property taxes, nine different kinds, including a tax on slaves; taxes on product, eighteen varieties, mainly land taxes and taxes on agricultural produce; house taxes, two different classes; business taxes, twenty-seven varieties; regular income taxes, four species; compulsory and semi-compulsory payments on constituent parts of income, forty kinds; taxes on transportation, four varieties; direct taxes on consumption, three different kinds. The indirect taxes

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seem to have been less varied: of customs duties we find only five classes, and of internal revenue or of excise taxes only four varieties. The remaining payments are largely of a private economic character.

When it is remembered that well-nigh all of these taxes are not only mentioned by name, but explained in more or less detail, it will be seen what a vast addition is made to our knowledge of fiscal history. It puts the earlier works on Egyptian finance out of date, not only as regards the mere enumeration, but also in respect to the details of assessment and levy of the taxes. Incidentally, Professor Wilcken adds chapters on "The Evolution from Credit to Money Payment" and on the "Relations between Slavery and Free Labor." He refers in some interesting passages to the recent controversy between the historical economists represented by Bücher and the economic historians represented by Meyer; and, while acknowledging with appreciation the stimulus received from the former's suggestive writings, he thinks that the latest contributions to Egyptian economic history tend rather to fortify the conclusions of Meyer. The second volume, which includes the texts of the potsherds themselves, will be of interest primarily to classical experts.

The history of Egyptian finance cannot yet be written. But if the discoveries of *papyri* and *ostraka* continue at the same rate as during the past few years, it will not be long before a complete reconstruction of the Egyptian fiscal system will be possible. In this reconstruction Professor Wilcken's volumes will form no mean part.

EDWIN R. A. SELIGMAN.

Politische und soziale Bewegungen im deutschen Bürgerthum zu Beginn des 16. Jahrhunderts, mit besonderer Rücksicht auf den Speyerer Aufstand im Jahre 1512. Von KURT KASER. Stuttgart, Kohlhammer, 1899. — viii, 271 pp.

Dr. Kaser's work owes, if not its origin, at any rate its form, to the controversy which has been raging of late between Professor Lamprecht and Professor Lenz, as to the meaning of the town disturbances in Germany in the fifteenth and early sixteenth centuries. Considering the heat of that controversy and the language which has been freely used on both sides, Dr. Kaser must be credited with keeping his head pretty cool and with setting a good example in the way of propriety of expression to the two principal contestants.

The work consists of four parts: a general survey of civic conditions about the year 1500; an account of the disturbances of the fifteenth

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century, collected from various modern town histories; an account of the disturbances of the years 1509–1514, from like sources, together with a detailed history of the rising in Spires in 1512 (pp. 34–185), based largely upon the author's examination of the unprinted documents in the municipal archives; and, finally, an account from modern histories of the town disturbances contemporary with the Peasant Rising. We have really, it will be seen, two treatises in one — a review of the whole field and an original investigation of the history of one particular town, Spires. Dr. Kaser in more than one place expresses his fear that this combination may have disturbed the "composition" of his treatise, but he need feel no distress on that score. It is not difficult — as recent instances have sufficiently shown — to cull from the town histories of Germany a catena of quotations to support almost any contention. It is much more to the point to exhibit in detail the forces at work in any particular town.

As will have been expected by any unbiassed reader of Professor Lenz's attack on the *Deutsche Geschichte*, Bd. V, in the *Historische Zeitschrift* (Bd. LXXVII), and Professor Lamprecht's reply in his *Zwei Streitschriften*, Dr. Kaser's general survey supports neither of the extreme contentions. The occasional disturbances during the course of the fifteenth century were, in the majority of cases, occasioned by the demands of the craft gilds for some share in the government of the towns: they were, in short, a belated continuation of the characteristic civic movement of the fourteenth century. The disturbances caused by social distress were few and comparatively unimportant. So far Professor Lamprecht's view requires correction. On the other hand, in the town risings of the year 1525 there are three distinct movements traceable, each most markedly in a particular set of towns: an anti-clerical, a moderate-reforming and a radical-communistic movement (p. 188). Here Professor Lenz's statement of the situation receives a necessary modification. To speak, as the former does, of "a hypertrophy of capitalism" and the growth of a "proletariate" as the causes of all the trouble, is to exaggerate and to substitute impressive generalizations for the awkward complexity of real life. To declare, as the latter does, that the troubles were all due to the craftsmen, leaves unanswered the question why the craftsmen should be discontented. Even if Professor Lamprecht does sometimes seem, as I must confess is the case even to a sympathizer, to have *Geldwirthschaft* on the brain, Professor Lenz would none the less be the better for a little more serious attention to the economic history of the period he has done so much to illumine.

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It is the complexity of real life with which Dr. Kaser's study of the internal history of Spires must most impress us. He begins by describing how in 1349 the patriciate had lost their exclusive powers and had been compelled to associate the craft gilds on equal terms with themselves in the government of the town, and how very soon the gild constitution became practically almost as oligarchic as that which had preceded it. This is, indeed, a common phenomenon, which is sufficiently illustrated by the London "companies." Dr. Kaser, however, would have done well to tell us, if he could, how the *Rath* was henceforth constituted. But, having thus prepared us to find in an oligarchic government the cause of the trouble, he tells us that it was chiefly in the relations of the town to the clergy that lay the roots of the deep dissatisfaction which came to the surface in 1512 (p. 37). And then follows a long history, going back to the middle of the thirteenth century, of the disputes with the clergy, concerning clerical immunities from lay taxation and jurisdiction and, above all, — for this seems to have caused most irritation, — as to their claim to sell the wine they produced without paying certain dues. Dr. Kaser takes the municipal side with ardor: he pictures a positively wicked attempt on the part of the ecclesiastical foundations to escape from the burdens of citizenship. But it may be remarked that we have not the other side of the story, and that every one of the arbitrators who were called in from time to time allowed the clerical claims, on the score of precedent. Evidently we cannot judge fairly of the matter, without having before us the outlines of the earlier history of the town. Dr. Kaser, however, makes us imagine the town as writhing beneath the heel of the priests; so that it is the greatest possible surprise to find, when the rising of 1512 comes, that there is hardly a word said about this supposed tyranny. The occasion of the rising was the discovery by the gild of carpenters in their archives of a certain document, from which it appeared that the *Rath* had reduced the size of the wine measure in 1375, with a promise, never since fulfilled, to restore it to its former amplitude in eight years. "My dear fellow, would n't you rather drink a big pot of wine than a small one?" (p. 56) seems to have been the rallying cry! It is true that this was bound up with a demand for a reduction of the civic excise (*das Hausumgeld*) on wine, corn and meal; so that we seem to be finding a demand for the alleviation of the indirect taxation imposed by a selfish oligarchy. And yet, when the revolutionary committee formulates its five demands, the first two deal with a reform of the administration of poor

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relief — a matter of which there has been no previous mention! The claims put forward in the protracted discussion between the *Rath* and the committee perhaps justify Dr. Kaser in saying that the rising was due to "a fundamentally democratic impulse": it seems as if the insurgents were desirous to break down the oligarchic monopoly of office and to open the financial administration of the town to public inspection. But it is not easy to see what all this has to do with the contemporary dispute with the clergy.

Dr. Kaser's work is full of promise. If, as I suppose, he was originally a pupil of Professor Lamprecht, he has made his way to a scientific independence from which much may be expected, and he has gone for himself to the original sources. His one danger is his style, which, like that of his master, is easy and flowing enough to serve only too readily as a cloak for vagueness of thought.

HARVARD UNIVERSITY. W. J. ASHLEY.

La Propriété paysanne. Par A. SOUCHON. Paris, 1899. — viii, 258 pp.

Das Landwirthschaftliche Genossenschaftswesen in Frankreich. Von THADDÄUS KUDELKA. Berlin, Puttkammer und Mühlbrecht, 1899. — vii, 178 pp.

These two little books, taken together, afford a fairly comprehensive view of the agrarian situation in France. Both books treat largely of the legislation on their subjects, but chiefly with the purpose of bringing out the social and economic effects of legislation.

In *La Propriété paysanne* M. Souchon has undertaken to discuss the much debated question of the relative social and economic value of large and small farms. Despite the wearisome controversies which have been waged over this question from the days of Arthur Young to the present, the author observes that the conditions of the problem have so changed, owing to the growth of democracy and, especially, of socialism, that a new treatise will find no temptation to follow old ruts. The book fully bears out the statement. The author defines the *propriété paysanne* as that exploitation which is large enough to support the farmer and his family, on the double condition that they be not too numerous and that they devote all their activities to the farm. It is thus distinguished from the *grande propriété*, which cannot be worked without regular recourse to hired labor, and the *petite propriété*, which is insufficient to support the cultivator without additional earnings. The social advantages of

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this form of holding are: that it tends to prevent the spread of socialism in the rural districts, that it prevents the return of aristocracy as well as of radical innovations, that it checks migration to the cities and raises the natural rate of increase of the population. On the economic advantages of peasant properties the author brings out the following new points: By the recent rapid growth of coöperation the small farmer is enabled to cut down the expenses of marketing and general expenses. Coöperation is also solving the problem of auxiliary industries, such as the manufacture of butter and cheese, wine and spirits. Small farms are also less devoted to grain raising, which suffers most from agricultural crises.

M. Souchon's conclusions may be summed up as follows: The medium type of farm is the best. At present it constitutes a fair proportion of the number of farms in France, and is slowly but steadily increasing in numbers. Artificial attempts to create or increase this type in France and elsewhere have usually failed, and the best course is gradually to remove the restrictions and let economic forces have free play. His advocacy is certainly temperate and his presentation is clear.

Dr. Kudelka's work supplements *La Propriété paysanne*, by showing how the small farm can through coöperation still better hold its own with the large one and with foreign competition. The minute subdivision of estates in France has tended to narrow the intellectual capacity of the peasant, and is in itself unfavorable to the use of labor-saving machinery. It has, therefore, been directly and indirectly a check to successful competition with young and progressive agricultural countries. How far this difficulty can be overcome by coöperation is an important economic problem.

The author of this excellent monograph has brought up to date the narrative of a movement which, on account of its phenomenally rapid growth, needs to be studied from the latest sources. The author seems to have made good use of the published material, and he has brought before the reader much valuable information. On the other hand, there is no evidence in the book that the author has personally observed the workings of the system among the rural population of France, and for his critical estimates of its value he depends largely on the judgments of others. Chief among the writers whom he cites is Rocquigny, whose *Coöpération de production dans l'agriculture* is very valuable, although there has been much progress since the publication of the book three years ago.

Dr. Kudelka's book is a discussion of the organization and

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functions of the *syndicats agricoles*. These are organized under a law of 1884; and it is estimated that in 1898 there were two thousand syndicates, with a membership of about one million. The membership of the societies includes agricultural laborers and landowners, great and small. The activities of the syndicates are too numerous to mention. They include the coöperative buying of agricultural supplies and the sale of agricultural products; coöperative production, including common ownership of implements, breeding animals, creameries, cheese factories, *etc.*; coöperative insurance, especially of live stock, and insurance against fire, hail, accidents, sickness and old age; establishment of relief funds and of savings and loan associations; promotion of agricultural education; political agitation, resulting in lower taxes on farm land and a higher protective tariff for agriculture; settlement of disputes by arbitration; unification of interests of the agricultural classes and opposition to the socialist propaganda. One of the newest and most promising undertakings is the formation of credit associations, in the syndicates modelled after the Raiffeisen loan banks in Germany. The author concludes that the syndicates, especially by means of coöperative buying and production, enable the small holders to participate in the advantages of farming on a large scale, without giving up the peculiar advantages of small farming.

This volume is of especial interest to American readers, since it was the early growth of our Farmers' Alliance that first suggested the *syndicats agricoles*. The coöperative attempts of the Farmers' Alliance failed, but our coöperative creameries, cheese factories and insurance societies have been a permanent success. Other forms are now developing; and, as the tendency is now toward small farms, and as at the same time more expensive appliances are coming into use, it is likely that the sphere of coöperation will increase.

COLUMBIA UNIVERSITY. C. E. PREVEY.

Landmarks in English Industrial History. By GEORGE TOWNSEND WARNER. London, Blackie & Son; New York, The Macmillan Company, 1899. — 360 pp.

The greatest problem which the chronicler of the economic or industrial history of a country has to solve is that of continuity. How can he give a continuous narrative, similar to that which is possible in considering political or most other aspects of history, when his material is not events but institutions, not occurrences which can

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be narrated but complicated relations or groups of phenomena which must be analyzed? Mr. Warner has recognized and at the same time minimized this difficulty, by treating his subject as a series of salient occurrences and institutions and gathering the other historic-economic phenomena about these. Success in obtaining an adequate and a continuous narrative in this way is partly a matter of knowledge, partly a matter of judgment and skill. In both of these respects Mr. Warner's volume seems to be well done. He has evidently digested his material and his "landmarks" are generally those which stand for the really significant stages in industrial evolution.

At the same time, English economic history will have to be still further simplified and unified before it can take rank as a scientific study with that of other aspects of history. The phenomena are so multitudinous, the influences so obscure, the interrelations so constant, the corporate character of national economic life so much less distinct than that of political or ecclesiastical life, that we must still search for some deeper unity or continuity than any here brought out before we can look upon it as a whole or upon any period of it as a single thing. Our first adverse criticism of this book — and perhaps it is an unfair one — is, therefore, for what it has not done, for its failure to give us any important generalizations. Thorold Rogers and Brentano reduced the explanation of much of English economic history to a comparatively few and mutually connected influences; but their facts were very generally mistaken and their inferences have been discredited. Later, Ashley, Cunningham, Gross and other contemporary students have made admirable collections of facts, but have failed to correlate them. This problem still remained to be solved — and Mr. Warner has not solved it.

The second deduction that should be made from the general praise which the book certainly deserves is that it contains some errors of fact and of statement. This was to be expected in a work which covers so large a field. For instance, in his whole discussion of the gild merchant and the craft gilds the author treats them as contemporaneous institutions, the former having charge of the trading and the latter of the handicraft of the time. But it is doubtful if a single case can be found, where there was a flourishing gild merchant and flourishing craft gilds in the same town at the same time. Again, on page 60 he speaks of "suing" a merchant gild. No such procedure was possible; for the gild merchant was not a true corporation. On page 84 the "Hanse of London" is wrongly defined. For the statement of the reversion from money to labor

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dues and the quarrels about commutation after the Black Death we have no authority, notwithstanding its frequent repetition by modern writers. Again, the attribution of a definite, far-seeing line of policy to kings like Edward III or Richard II does not bear conviction with it. It is, further, doubtful whether the "English Company of Merchants Adventurers" ever traded to the Mediterranean or the Baltic, though other companies spoken of or chartered as "merchants adventurers" may have done so.

But these and some other inaccuracies lie largely in the earlier periods, where there is still a margin for differences of opinion; and in general the book is better, the more nearly modern times are reached. This, again, is one of its distinctive merits — that it does differentiate the most important elements from the immense mass of economic occurrences during the eighteenth and nineteenth centuries. The changes in manufacturing and in the position of the artisans, the contemporary agrarian changes and the dominance of a certain view of state functions furnished in the eighteenth and early nineteenth centuries the key to the great social transformation of the period, just as they did in the fifteenth and early sixteenth centuries. Commerce, money, trade and finance were of far less influence on social organization than were these more general conditions at both the earlier and the later period.

EDWARD P. CHEYNEY.

UNIVERSITY OF PENNSYLVANIA.

The County Palatine of Durham. A Study in Constitutional History. By GAILLARD THOMAS LAPSLEY, Ph.D. (Harvard Historical Studies, VIII). London and New York, Longmans, Green & Co., 1900. — 380 pp.

This monograph is important for two reasons, and its contents will appeal to two classes of students. In the first place, it treats of a phase of English history which has long needed investigation, and therefore it will be of interest to students of political development in Great Britain. Great and prolonged emphasis has been laid on the tendencies toward national unity in England, on the uniformities in its development; and results of this nature, which have been favored by its insular position, have been dwelt on at great length. This has been counteracted, to an extent, through the influence of Ranke and his school, by their insistence on the part which England has played in the common political system of Europe and the consequent reaction which this has had on the internal affairs of the

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country. But it is already time that the special jurisdictions which existed within England itself, and which suggest the political disunity of Continental states, should receive attention. Of these, the palatinates are of special importance; and it is to be hoped that this volume will be followed by others, till the history of their internal development and of their relations with the crown shall be fully told. Connected with these studies should be others on the legal and administrative relations between the crown and the mediæval dependencies of England — Ireland, the possessions in France and the Channel Islands. Thus, more light would be cast on the imperial side of British history in its rudimentary stage.

The statement just made suggests the second group of students to whom this monograph will appeal, and the second reason for considering it valuable and useful. The county palatine, and especially the County Palatine of Durham, suggested the form which was given to the proprietary province in the British colonial system. Its history there forms a natural introduction to the study of the proprietary provinces in America. Analogies and suggestions of much value may be derived from it by the student of American institutions. It presents a side of English history the further investigation of which might well be pursued by Americans.

Dr. Lapsley, in discussing the origin of the palatinate of Durham, does not accept the evidence of early royal grants which Hardy inconsistently cited, nor does he agree with the supposition that the immunities of the see resulted from the independence of the old kingdom of Northumbria. But, owing to the fragmentary nature of the data, he can only conclude that by a gradual process the clergy and laity connected with the church of St. Cuthbert and its lands came to be the holders of a great ecclesiastical franchise. This was strong and remote enough to survive the Norman Conquest and the vigorous measures of Henry II, and so came in the thirteenth century to be called a palatinate.

After discussing the origin of the palatinate, Dr. Lapsley describes the powers of the bishop as lord palatine, the officers of the palatinate, its assembly and the bishop's council, the judiciary, both in its internal organization and in its relation to the royal courts, the financial and the military system of the palatinate. Each of these subjects he examines, both with reference to the powers exercised when, during the fourteenth century, the palatinate was at the height of its development and to the rise and decline of those powers. Public law and history are thus combined in the author's plan throughout

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the book. It is noteworthy, though to be expected, that the treatment of the internal organization of the county involves mainly an explanation of the analogies between it and the kingdom. These, though affirmed by the earlier writers, are now proven abundantly and in detail. In form, the regal powers of the count palatine, as executive, landlord and judicial head of the county, and the titles, tenures and powers of the officers of state, resemble those of the kingdom far more than they differ from them. But that the process of growth was free is shown by the closer analogy between the steward and council of the palatinate and the corresponding institutions in France. The evidence brought forward by the author indicates that the assembly developed from the full county court by the assumption of tax-granting powers, but its legislative functions are shown to have been slight. Besides the taxes levied by authority of legislative grant, the bishop, as head of the government, as feudal lord and as head of the judiciary, collected many of the forms of revenue which the king took in the kingdom.

But the other side of the picture is also revealed with sufficient clearness. Not only is the palatinate shown to have possessed the essential organs of mediæval-feudal government, but the fact of their imperfect and rudimentary development is also fully recognized. It appears in the small number of officials and the union of many functions in the hands of the same person; in the failure of the council, under pressure of business, to differentiate into judicial and administrative bodies, as did the *curia regis* in England; in the imperfections of seigniorial justice, so far as it was a product of local conditions. Population was sparse and social pressure was not intense. Analogous conditions are familiar to the student of our colonial history, and these also resulted in a slow and rudimentary development of institutions. But another element of the problem, of which our author has taken proper account, and which must always be considered when treating of special jurisdictions, is the moulding, restraining, even cramping influence of the sovereign power. The strongest chapter in the book is the one in which the writer carefully discusses the palatine courts in their relation to the royal judiciary. In this, with thoroughness and power, the "drift toward the extension of royal justice at the expense of the palatine immunities and privileges," is traced till it culminated in the statute of 1536 and the erection in the following year of the Council of the North.

Dr. Lapsley has apparently made careful use of all authorities

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relating to his subject, both in print and in manuscript, but he has found them fragmentary; and therefore his conclusions are more often tentative than positive, and the account he is able to give is, in many cases, meagre. But the book, though written without any of the ornaments of style, is worthy of high praise as an example of scientific thoroughness and caution.

H. L. Osgood.

The Life of Charles Henry Davis, Rear-Admiral, 1807–1877. By his son, Captain Charles H. Davis, U. S. N. Boston and New York, Houghton, Mifflin & Co., 1899. — 349 pp.

The subject of this biography entered the navy as a midshipman in 1823, giving up his college career in order to accept the appointment. In those days the education of a naval officer was obtained at sea. The Naval Academy was not founded till 1845; nor did the requirements of naval service seventy-five years ago necessitate an extensive scientific education, such as is demanded at the present time. After spending seventeen years almost constantly at sea, Davis went to Cambridge, Mass., and took his degree at Harvard. In April, 1842, he was appointed assistant on the Coast Survey, and seven years later he was placed in charge of the *American Ephemeris and Nautical Almanac*, which he founded.

When the Civil War broke out, Commander Davis was summoned to duty in the Navy Department. Here he became the real executive head of the Bureau of Detail, the duties of which embraced the assignment of officers, the appointment and instruction of volunteer officers, and the purchase of ships. He was, besides, secretary of a confidential board appointed to consider and make suggestions concerning the naval service generally; and also a member and secretary of a mixed commission on the conduct of operations on the Southern coast.

In September, 1861, he was, however, detached from his departmental duties and appointed fleet captain and chief-of-staff of the South Atlantic blockading squadron, of which Du Pont was then commander. He was in the Port Royal expedition, bearing a leading part in all the operations. May 9, 1862, he relieved Flag Officer Foote in command of the United States naval forces in front of Fort Pillow, and on the next day, being attacked, defeated the Confederate flotilla. Less than a month later he destroyed or captured all but one of the ships of the Confederate squadron at Memphis, thus completing the work begun by Farragut at New Orleans, in the

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preceding April, of destroying the Confederate naval power on the Mississippi. He remained on the Mississippi till the following September, when he assumed charge of the Bureau of Navigation in the Navy Department. At the close of the war he became superintendent of the Naval Observatory; and, during his two years' incumbency of the post, he published a well-known report on inter-oceanic railway and canal routes across the American Isthmus.

It seems a singular fate that the concluding part of the life of this distinguished and gallant officer should have been disturbed by the unjust attacks of some of the participants in an incident which occurred in his last service at sea. I have heretofore discussed this incident with some care, though without special reference to the part played in it by individuals.[1] In 1867 Admiral Davis was appointed commander-in-chief of the Brazil station. As war was then flagrant between Paraguay and the Triple Alliance, whose forces were operating on the river Paraguay, one of his most important duties at the moment was to keep communication open with the United States legation at Asuncion. This duty he performed; but he also incurred the ill-will of certain persons, who, in spite of the fact that two of the three were mere adventurers and one of these a British subject, as well as of the fact that the Admiral's course was approved by the Navy Department, instigated a Congressional investigation, by means of which they secured notoriety for their grievances.

In Captain Davis's narration of this affair I observe only one inadvertence — namely, the statement that, when Admiral Davis approached Angostura in the *Wasp*, with the successor to Mr. Washburn as minister on board, the presence of the "newly appointed minister . . . was not proclaimed, nor was it known by either the Brazilians or Paraguayans until the affair was concluded by the navy." In Admiral Davis's first letter to President Lopez, December 3, 1868, announcing his arrival in front of Angostura, it was stated, at the outset, that "his excellency General M. T. McMahon," the new "minister of the United States to the republic of Paraguay," was "on board"; and this was followed by a certain demand, compliance with which was declared to be an "indispensable step" to the presentation of his credentials.[2]

J. B. MOORE.

[1] POLITICAL SCIENCE QUARTERLY, VII, 197–205 (June, 1892).
[2] Dip. Cor. 1868, Part ii, p. 693.

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Colonial Civil Service. By A. LAWRENCE LOWELL. With an account of the East India College at Haileybury (1806–1857), by H. Morse Stephens. New York, The Macmillan Company, 1900. — xiv, 346 pp.

This work is devoted to a description of the methods adopted in Great Britain, Holland and France for the selection and training of the officials in the colonial civil service. The book is useful, both as a compendium of information and as containing suggestions regarding the future policy of the United States in this direction.

So far as the first is concerned, Mr. Lowell points out, not merely how far the various systems differ at the present time, but also how far modifications have been made in each system, in order to adopt the improvements which experience has shown to be necessary or advisable. The tendency indicated by the laws and regulations of all the countries concerned seems to be towards (1) a competitive examination on general subjects, the study of which will not have resulted in wasting the time of the student, in case he is unsuccessful; to be followed by (2) a course of special study upon subjects directly relating to a colonial official career. The result of such a system — which, however, has perhaps not been established in all its details in any of the countries — is to ensure to each person who has successfully passed the competitive examination a place in the colonial service. The system also confines all appointments for the colonial service to persons who have had an education that is practically the equivalent of a college education in the United States, since only those persons who have had such an education can be expected to pass successfully the competitive examinations necessary for entrance into the service.

Mr. Lowell does not think that such a system is applicable in the United States, under the present condition of public opinion as to office-holding, and suggests as an alternative the establishment of a colonial school, somewhat like the present military and naval academies. Recognizing, however, that the demands of our colonial service would not, probably for many years to come, be sufficient to justify the establishment of such a school, if it were to be devoted solely to the education of colonial officials, he makes the very sensible suggestion of using it as well for the education of consular officers, particularly those stationed in Asiatic countries. Mr. Lowell believes that such a school would meet with little objection on the part of the people generally, if appointments to it were made in the same manner in which appointments to Annapolis and West Point are now made.

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Believing, as he does, that a colonial college is what we need in the United States for the training of our future colonial officials, Mr. Lowell has prevailed upon Prof. Morse Stephens to write an account of Haileybury College, which was put to similar use by the old East India Company for the first half of this century. This account follows the main body of the work, and a perusal of it cannot fail to impress the reader with the belief that Mr. Lowell has been peculiarly fortunate in securing the coöperation of Prof. Stephens. The reader is certainly convinced that no better argument in favor of Mr. Lowell's thesis could have been adduced than the records of old Haileybury, as thus charmingly set forth.

FRANK J. GOODNOW.

Municipal Government, as illustrated by the Charter, Finances and Public Charities of New York. By BIRD S. COLER, Comptroller of the City. New York, D. Appleton & Co., 1900. — viii, 200 pp.

This little book contains the gist of several magazine articles, addresses and reports by Mr. Coler. It deals with some of the specific municipal problems that have presented themselves in New York City during the two years since the extension of the city boundaries and the charter of 1897 went into effect. Two chapters on "Public Charities" describe the former and the new methods of municipal grants to private charities; and one on "Water Supply" is a brief in opposition to the proposed contract to secure water from a private company. On both subjects Mr. Coler's attitude as an official has been productive of striking practical results. The remaining chapters are descriptive and critical, making suggestions as to charter changes, as to lines of municipal development and as to the improvement of municipal politics.

The Comptroller finds that under the present charter the borough presidents and the board of public improvements are useless offices, and the municipal assembly is worse than useless. He favors for all the municipal departments single heads, made clearly responsible to the mayor by giving that official the power to remove them at any time during his term. He would centralize the entire auditing and accounting work in the comptroller's office. He would increase the powers of the board of estimate, and would make another member elective, so that the board would not be controlled by the mayor and his appointees, as at present. The adoption of this last suggestion, with the abolition of the municipal assembly, would practically

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complete the evolution of the board of estimate into a small council, elected on a general ticket and with no minority representation.

Mr. Coler believes in the extension of municipal functions, at least on the lines already begun in New York; and advocates that debts incurred for such self-supporting enterprises as docks, water supply and underground railways should not be included within the constitutional debt limit. He presents arguments in favor of tunnels, rather than bridges, to connect Brooklyn with Manhattan.

The book does not pretend to be a scientific or literary treatise, and it might be criticised from either point of view. But it presents some tangible questions of importance concerning the betterment of municipal conditions in New York with a brevity that will commend the work to those most concerned — the busy citizens of New York; and at the same time it contains data of value to the student of municipal government.

JOHN A. FAIRLIE.

UNIVERSITY OF MICHIGAN.

Wörterbuch des Englischen Rechts. Von DR. KARL WERTHEIM. Berlin, Puttkammer & Mühlbrecht, 1899.

Mr. Wertheim's book is one of the latest contributions to German literature on English law. The work is much in the nature of our own law dictionaries: that is, in addition to defining legal terms, it gives brief expositions of rules and principles — half dictionary, half encyclopædia. An examination of a number of the more prominent articles shows a remarkable accuracy of information and grasp of principles. The book appears to give the substance of all the important modern English statutes touching administrative and private law and procedure, and the facts and decisions of a large number of leading cases are summarized. An English reader may regret the absence of the names of the cases referred to, but most of them are easily recognized. The treatment of the articles dealing with real estate and conveyancing is especially to be commended; the author shows the effect of the old rules and their statutory reforms, without attempting the hopeless task of explaining in detail all the intricate technicalities and fictions by which these rules were produced. It is hardly to be wondered at that some of the most cherished doctrines of the common law should not meet with unqualified approval or hearty appreciation. It would probably be a futile task to attempt to convince a civilian of the necessity or the wisdom of the requirement of a consideration for the validity of a contract.

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The criticism directed against some of the surviving "barbarities" of the common law is well deserved, as in the matter of the crude provisions regarding homicide.

On the whole, the work seems well adapted to the purpose for which it is intended — to give to German lawyers and scholars a ready means of informing themselves as to the meaning of English legal terms and the main principles of English law. Even American readers may find the book useful, as a guide to English statutory legislation brought down to date.

ERNST FREUND.

UNIVERSITY OF CHICAGO.

L'État fédératif: législation comparée et sociologie. Par RAOUL DE LA GRASSERIE. Paris, A. Fontemoing, 1897. — 248 pp.

According to M. Grasserie, states may be grouped into three classes — unitary, federal and isolated. The author assigns himself the comprehensive task of determining (1) the natural basis, from the sociological point of view, of the three political types; (2) the rôles they have played in history; (3) their respective merits and demerits. In conformity with this triplicity of aim, the work is divided into three parts, designated respectively as theoretical, experimental and practical. The theoretical part is devoted to the exploitation of an alleged analogy between the phenomena of affinity, condensation and rarefaction as observable in the physical world and union, centralization and disruption as seen in political and social life. Back of these physical phenomena lies heat as the energizing agent. Corresponding to this in society is social and political unrest. As between nations, this unrest takes the form of war. Peace is the absence of motion; and so on for fifty pages. The second part is taken up with the briefest sort of a description of the various federations of the world. In the third part, which is devoted to a statement of results, the chief emphasis is laid upon the fact that because of its very bulk and multiplicity of duties a unitary state of any considerable size, such as France or Russia, is a "social monstrosity." In a series of fifteen appendices the possibility is considered of transforming the present communes and departments of France into true federal units. The reviewer cannot say what value the work of M. Grasserie may have to his own countrymen, but to Americans its possible use is very nearly *nil.*

WESTEL WOODBURY WILLOUGHBY.

JOHNS HOPKINS UNIVERSITY.

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BOOK NOTES.

Professor Henry P. Johnston has added another to his thorough and interesting studies of New York history during the Revolution by the issue of his volume on *The Storming of Stony Point* (New York, James T. White & Co. — 231 pp.). The first half of the book consists of a careful study of the event, considered as a part of the general scheme of operations for the year 1779; the last half is filled with a collection of contemporary letters and documents, which furnish the authority for the most important statements made in the text. Of special interest is the new material brought to light from English sources.

In his new volume, *The Mississippi Valley in the Civil War*, (Houghton, Mifflin & Co., 1900), Mr. John Fiske tells in his vivid and entertaining way the story of Donelson, Stone River, Vicksburg, Nashville and the other campaigns of the West. There is no attempt to present new facts or new judgments in connection with the subjects treated; but the familiar facts and the very sound judgments to which the author gives his approval are so well set forth as abundantly to justify the publication.

The first quarter of Col. A. K. McClure's new book, *Our Presidents, and how we make them* (New York, Harpers, 1900. — 418 pp.), is a perfunctory account of presidential elections down to 1848. With the campaign of that year began the author's personal relations with presidential politics — relations which became, with the rise of the Republican Party, of the most intimate character; and he is therefore able to furnish a large amount of interesting information as to what went on in that eternally fascinating realm known as the "inside." The range and variety of Colonel McClure's acquaintance and activity are illustrated by the fact that he was prominently involved in the negotiations that preceded the choice of Lincoln in the Republican Convention of 1860, as well as in those that led to the choice of Cleveland in the Democratic Convention of 1884; and he is able to tell from his immediate personal knowledge how Mr. Hanna was forced to accept the gold plank in the Republican platform of 1896. All of the author's stories are interesting, but some of them verge upon the legendary and mythical — as, for example, that which

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attributes Conkling's course in the Hayes-Tilden dispute to the influence of Kate Chase Sprague, who thus avenged on Tilden the defeat of her father's nomination in 1868.

The Territorial Acquisitions of the United States: An Historical Review, by Edward Bicknell (Boston, Small, Maynard & Co., 1899), purports to "recite in detail all the precedents established by the United States" on that subject, and to tell "the whole truth, in simple graphic language, concerning every event" having "any relation" thereto. This is an ambitious project to carry out in 110 small duodecimo pages. A few examples of the manner in which it has been performed may be taken at random. We are told (pp. 36, 37) that Florida was ceded for $5,000,000, and that Spain "may have regarded the money as worth more to her" than a troubled possession of the province. In fact, Spain received no money; it was paid by the United States directly to its own citizens, in satisfaction of their claims against Spain. The date of the Louisiana purchase is given (p. 106) as 1802, and it is represented (p. 107) that we obtained "cessions" of territory from Mexico in "1846 [*sic*] and 1853." It is said that, when Lewis and Clark started on their expedition, "Louisiana was ours, and their route lay all the way in the territory of the United States"; although it is elsewhere stated (p. 40) that "Oregon is the one addition to our domain which has come to us by discovery and occupation." The treaty of 1846 is referred to (p. 48) as having fixed "the northern boundary of Oregon," as if the dispute has been one of the boundary of the territory, rather than of title to it.

Maximilian in Mexico: A Woman's Reminiscences of the French Intervention, 1862–1867, by Sara Yorke Stevenson, Sc.D. (New York, The Century Company, 1899), is the outgrowth of a series of articles which appeared in *The Century Magazine* in 1897 on the French intervention in Mexico and the reign of Maximilian. In the rounded and elaborated form in which the subject is now presented, we have the personal recollections of the author (who describes herself as "one of the latest survivors of the drama"), with an admixture of the results of historical investigation. The two things are so combined that the book cannot strictly be called either a volume of reminiscences or an historical work; yet it possesses an interest and a charm of its own, and will serve to convey to the reader much trustworthy information concerning an episode of which little is popularly known. In the preparation of the historical part the best sources have been consulted, and they have been used with discrimination

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and good judgment. Here and there a document is given which throws a more vivid light on the scene than any effort at "word painting" could possibly do. As examples, we may refer to the letter of General Prim to Napoleon III of March 17, 1862 (p. 25), and the "Bando Negro" of Maximilian of October 3, 1865 (p. 309). The letter of General Prim, though it has often been ascribed to sinister motives, has always seemed to us to exhibit so much statesmanship as to render any apology for writing it superfluous.

In a work entitled *An Outline of Political Growth in the Nineteenth Century* (New York, The Macmillan Company, 1900.—xiii, 616 pp.), Mr. E. H. Sears takes as his theme the emancipation of the "oppressed and suffering commoner" from the "deadening tyranny" which prevailed prior to the French Revolution. He contents himself, however, with sketching chronologically the history of the various nations of the world, except China. These he arranges under the following heads: (1) Continental Europe, including the Latin nations, Southeastern Europe and Russia, and the Teutonic nations; (2) Great Britain and her colonies; (3) The United States; (4) Spanish and Portuguese America; and (5) unclassified countries. The principle of classification is that of a community of natural impulse and political experience, which emanates from similarity of racial characteristics, geographical situation or historical circumstances. Thus, although Belgium, San Marino and Andorra are found among the Latin nations, Spanish and Portuguese America is treated separately, while Hayti and San Domingo fall into still another category. It is hard to understand why Mr. Sears groups Belgium with the Latin nations, because its "politics are dominated by the excitable Southern temper," when he asserts in the same breath that the Celtic element has "controlled its political development" (p. 4). Nor, in the light of recent occurrences, can the reason for associating Austria-Hungary with Russia — namely, that it is peopled by races that have the "subservient Oriental temper" — be regarded as exactly cogent. Frequent errors of statement (for example, that the representation in the German *Bundesrath* is apportioned according to population), a distinct bias against the Latin peoples and the inconsistency of narrating the latest details of the Dreyfus case, while omitting any reference to the tremendous political activity in China, tend to limit the usefulness of the book as a study of nineteenth-century conditions.

The advocates of the materialistic interpretation of history have not been content to explain law and politics in terms of economics. Some of the more extreme among the younger socialists have gone

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so far as to maintain that not only the history of philosophy, but religion itself, is to be interpreted by economic categories. Some recent attempts to apply this method to the origin of Christianity have led to a vigorous refutation by Hermann Kohler, in his book entitled, *Socialistische Irrlehren von der Entstehung des Christentums und ihre Widerlegung* (Leipzig, Hinrichs'sche Buchhandlung, 1899.—272 pp.). As was to be expected, the task was not a difficult one: it is easy to show that a spiritual movement cannot be explained on merely material grounds. In the heat of his argument, however, Herr Kohler goes too far in attempting to minimize the importance of certain social conditions which rendered the reception of the new doctrines easier than it would otherwise have been.

We noticed some time ago (POLITICAL SCIENCE QUARTERLY, XIV, 181, 565) the first volumes of the collected writings of the French economist and statesman, Léon Say. The same publishers have now issued a companion volume containing his biography, written by M. Georges Michel (*Léon Say: sa vie, ses œuvres.* Paris, Calmann Lévy, 1899.—581 pp.). Although devoted largely to his public career, the book affords many little glimpses into his private life, which was one of exceptional contentment and distinction. Here again we notice what unremitting study and hard work are necessary to give even the most brilliant man a position of enduring reputation. Léon Say was not only a *homme d'esprit*, but a close student. The bibliography of his books, printed addresses and essays covers no less than twenty-three closely printed pages. M. Michel's book is a well-deserved tribute to the greatest of recent French ministers of finance, and incidentally forms no mean contribution to French fiscal history.

The younger French writers have, during the past few years, shown a commendable interest in the subject of economic history in their own country. The Abbé Galiani, although an Italian and often quoted by his countrymen on other topics, is known in the history of economics principally for the important part he played in the struggle between mercantilism and physiocracy in France. M. Eugene Gaudemet discusses this whole period in his work entitled *L'Abbé Galiani et la question du commerce des blés.* (Paris, Arthur Rousseau, 1899.—233 pp.). The author gives a vivid account of the characteristics and general philosophy of the brilliant Abbé, and analyzes the practical common-sense views of his hero, in opposition to the dreams of the physiocrats. He vindicates for Galiani the title of the forerunner of the historical or comparative school. But such a claim might equally well be made for almost all of the opponents of the

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physiocrats. Incidentally, M. Gaudemet shows that Galiani's recall from his diplomatic post at Paris, which immediately followed the appearance of his celebrated letters on the corn question, had nothing to do with that particular controversy.

It is difficult to see the justification for the reprint in abridged form, by Professor Charles R. Henderson, of Thomas Chalmers's *Christian and Civic Economy in the Large Towns* (New York, Scribners, 1900.—350 pp.). That Chalmers was a good man, that he had some sensible ideas on the practical problems of pauperism and that he is in part responsible for the idea of the later University settlements, is, indeed, true. But his writings on general economic problems are well-nigh valueless. Where he followed the classical economists, as in the doctrine of population and wages, he accepted their errors; and where he opposed the economists, he was in almost every instance wrong. Professor Henderson has in his introduction a chapter in criticism of Chalmers's social teachings which is entirely too mild, and another chapter entitled "Some of the Important Contributions of Dr. Chalmers to Modern Social Movements of Thought and Action." The first sentence in this chapter begins: "It cannot be claimed that our author made any important contribution to economic or political theory."

The recent progress of French socialism has been so rapid that students of the problem will be especially interested in two works which have appeared during the past few months. The one is the collection of essays by the intellectual leader of the socialist movement in France, Professor Jean Jaurès, under the title, *Action socialiste* (Paris, Georges Bellais, 1899.—12mo, 558 pp.). This is the first of a series of volumes, and contains his chief speeches during the past decade. The subjects discussed in this volume are summed up under the two heads of "Socialism and Education" and "Socialism and the Nations." There is very little of economic socialism in the work; for when a socialist like M. Jaurès discusses education or international politics, his conclusions do not differ much from those that would be accepted by an average American with a moderate degree of interest in social reform. The other book is a stenographic report of the *Proceedings of the General Congress of Socialist Organizations*, held in France last December (Paris, Société Nouvelle de Librairie de l'Édition, 1900.—12mo, 495 pp.). This Congress was interesting, being the first successful attempt to reunite into one body all the various sections which have, until now, been almost at swords' points. One of the most important questions

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that came up is put in the following terms: Does the class struggle permit a socialist to take part in a bourgeois ministry? This, as is well known, refers to the present minister of commerce in France, who happens to be a socialist. Jaurès and Guesde were, as usual, leaders in the Congress. The discussions, as was to be expected in so young an organization, were not so temperate or so conservative as those of their older brethren across the Rhine.

L'Impôt sur les successions en Angleterre, en France et en Belgique is the title of an essay of 140 pages by Georges Vanden Bossche, reprinted from the *Revue des Questions Scientifiques* (Louvain, Polleunis et Ceuterick, 1900). The work is devoted mainly to an examination of the changes introduced in the English death duties by the Finance Act of 1894, and of the reforms recently proposed in France and Belgium, in comparison with the existing inheritance taxes. There is an interesting and even lively account of the parliamentary debates on the subject in each of the three countries; for the author seems to have the knack of extracting juice from the driest sources. The discussion in each case involves the question of progressive rates, and the author adds his own views on the theory of that subject. He approves of progressive taxation as a compensation for the regressivity of indirect taxes. It may not be generally known in America that the French Senate, as well as the Chamber of Deputies, has voted in favor of the principle of progressive inheritance taxes, though the two chambers have not agreed upon the details of a measure embodying the principle.

Thanks to the Musée Social, a series of works on the conditions of labor in the various countries of the world has been undertaken by young scientists especially designated for this purpose. The United States has fared better in some respects than the European countries. A year or two ago M. Rousiers published his book on trusts, or the concentration of capital; and now there appears, from the pen of M. Louis Vigouroux, a companion book on the concentration of labor (*La Concentration des forces ouvrières dans l'Amérique du Nord.* Paris, Armand Colin & Cie. — 12mo, 362 pp.). M. Vigouroux is professor of political economy at the Paris Architectural School, a title which in itself suggests how much broader is the scope of professional education in France than with us. The author visited this country three times — in 1893–94, in 1896–97 and again in 1898 — and made good use of his opportunities, not only by collecting a mass of material on the trades-union question, but also by visiting in person the important cities. His book is not so much a study of

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trade unionism in itself as a discussion of the attempts at union between the various organizations. He takes up in turn the typographers, the printing trades, the cigar-makers and the carpenters, and shows the degree of federation that has been accomplished. A large part of the book is naturally devoted to the American Federation of Labor. His history and analysis of the methods of collective bargaining in this country are by no means exhaustive, but put much important material in interesting form. He is not in any sense a radical; but his conclusions as to the past and the future of federated labor are distinctly optimistic. It is a book worth reading by Americans, as well as by Frenchmen.

Die Konsumption der wichtigsten Kulturländer, by Kurt Apelt (Berlin, Putthammer & Mühlbrecht, 1899), is a painstaking collection of statistics — apparently a doctor's dissertation, prepared under the direction of Professor Conrad. The author considers thirteen articles of personal consumption (food, *etc.*) and nineteen of technical consumption (coal, iron, *etc.*). The enormously increased *per capita* consumption of both during the last few decades points unmistakably to increased well-being of the mass of the people.

The Cost of Living, as modified by Sanitary Science, by Mrs. Ellen H. Richards (John Wiley & Sons), contains a great deal of good advice to young housekeepers about keeping accounts, avoiding waste in food, distributing the income correctly and caring for the health of the family; but there are very few directions how to do all this scientifically. The title would seem to demand some information in regard to the nutritive qualities of different food materials and the ways of combining them in proportions conducive to health.

The Past and Present Condition of Public Hygiene and State Medicine, by Samuel W. Abbott, is one of the monographs presented by the Department of Social Economy for the United States Commission to the Paris Exposition of 1900. It gives very carefully prepared statements, illustrated by charts, of the growth and activity of state and municipal boards of health, of the water and sewerage systems of cities and towns, of vital statistics and of some facts in regard to medical education in the United States. The work is authoritative, on account of the author's experience and long interest in such matters.

The War Department has issued three bulletins on the census of Cuba and two on that of Porto Rico. The statistics cover population by departments, municipal districts, cities and wards, age, sex, race, nativity, conjugal condition and literacy. Our new possession

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(Porto Rico) is about three times the area of Long Island and has a population of 953,243. Of these 59,390 are negroes, 304,352 of mixed blood and 75 Chinese, making a total colored population of 363,817, or 38.2 per cent of the total population. The age statistics show a large number of children, and only 11.8 per cent over the age of 45, indicative of low vitality. The number of single persons is very large, even if we add to the married those not legally married but living together as man and wife by mutual consent. The proportion of illiterates is 83 per cent—higher than in any state of this Union or in any of the other West India Islands.

With the appearance of the third volume of the *Dictionary of Political Economy* (Macmillan, 1899.—762 pp.), Mr. Inglis Palgrave brings his great work to a close. In a modest preface he explains the ideals with which he set out. Not only has the work taken the unremitting labor of twelve long years, but the success that has been achieved would have been impossible without that broad-mindedness, that common sense and that equipoise of judgment that have characterized the editor and have earned for him the gratitude of all English-speaking students. Taken all in all, the *Dictionary of Political Economy* is the best of its kind in any language. It may be favorably compared with its French prototypes, in that it does not try to teach any one set of doctrines, but knows only truth for its own sake. It differs from the German economic cyclopædias in the conciseness and the lucidity of its articles and in the wealth of its biographical and bibliographical detail in respect to English authors. To call attention to any of the specially noteworthy articles in this volume is needless, as the work has already earned its place in every library, however small, which deals at all with economic literature. A very full and admirably printed index materially enhances the value of the work.

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